



State of Wisconsin  
**Department of Health and Family Services**

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Tommy G. Thompson, Governor  
Joe Leean, Secretary

September 20, 2000

Mr. Charles Sanders  
Assembly Chief Clerk  
Room 402, 1 East Main Street  
Madison, WI 53702

Dear Mr. Sanders:

Enclosed is a copy of the Child Abuse and Neglect Report, 1997 and 1998 data, pursuant to s. 48.981. The report includes a statistical analysis of suspected child abuse and neglect reports received and investigated by county child protective services (CPS) agencies in 1997 and by the county CPS agencies and the Bureau of Milwaukee Child Welfare 1998. The report also contains information on child fatalities due to child abuse or neglect.

Sincerely,



Joe Leean  
Secretary



# CHILD ABUSE AND NEGLECT

R E P O R T



1997 & 1998 DATA

*Bureau of Programs and Policies  
Division of Children and Family Services  
Department of Health and Family Services*

**Report to the  
Governor and Legislature on Wisconsin  
Child Abuse and Neglect**

**Data for Calendar Years 1997 & 1998  
Statistics, Averages and  
Historical Trends**

**Prepared by:  
Bureau of Programs and Policies  
Division of Children and Family Services  
Department of Health and Family Services**

**This report is available on the internet at  
[www.dhfs.state.wi.us](http://www.dhfs.state.wi.us)**

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Totals cited in figures, tables and text throughout this report may not always be consistent because more than one type of maltreatment may be associated with one child, more than one maltreater may be involved with a child, and more than one reporter may be associated with a specific maltreatment report.

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## INTRODUCTION

Alleged child maltreatment is reported to all 71 county social or human services departments in the state and to the Bureau of Milwaukee Child Welfare in Milwaukee (BMCW). Data regarding each report screened in and investigated is sent to and compiled by the Department of Health and Family Services in order to allow decision makers, service providers and the public to understand and effectively respond to trends in child maltreatment.

This report presents specific county data and aggregate data for the years 1997 and 1998. As in previous years, data regarding the number of children reported includes only those reports screened in by the county agency or BMCW as potentially being within the parameters of statutory definitions of alleged child maltreatment. These are the reports that are investigated. Not all reports received are appropriate for investigation. Although they may represent a concern for a child or family, the concerns may not rise to a level to warrant public intervention. Referrals that are screened out and not investigated are not included in the data.

The quality of the data in this report is dependent upon the quality and accuracy of data submitted by the local agencies. The state of Wisconsin looks forward to full implementation of the statewide automated child welfare information system (WiSACWIS), as it will greatly expand the type of data collected and improve the timeliness and accuracy of child welfare data throughout the state.

Child maltreatment is generally divided into four basic types: physical neglect, physical abuse, sexual abuse and emotional abuse. In addition, threats of child abuse and neglect must

be reported to and investigated by the county agencies and BMCW.

Physical neglect is defined in the statute as: “failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.” [48.981(1)(d), Stats.]

Physical abuse is defined as: “physical injury inflicted on a child by other than accidental means.” [48.02(1)(a), Stats.] This includes non-accidental injury inflicted by any other person. “ ‘Physical injury’ includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22(14)” [48.02(14g), Stats.]

Sexual abuse is defined by cross-referencing several crimes in other sections of the statutes. These crimes and the child maltreatment reporting laws can be found in Appendix C. Briefly, sexual abuse includes the following:

- any person having sexual intercourse or sexual contact with a child 15 years of age or less
- any person having sexual intercourse with a 16- or 17-year old child without his or her consent
- any person inducing a child to engage in sexually explicit conduct in order to videotape, photograph, etc. that child or videotaping, photographing, etc. a child for such purposes, or producing, distributing, selling

or otherwise profiting from such a videotape, photograph, etc.

- a person responsible for a child's welfare encouraging or permitting the child to engage in sexually explicit conduct for the purpose of videotaping, photographing, etc.
- any person causing a child to view or listen to sexual activity
- any person exposing genitals to a child
- any person permitting or encouraging a child to engage in prostitution

Emotional abuse is defined as "Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms." [48.02(1)(gm), Stats.]

The definitions of child neglect and emotional abuse involve failure on the part of parents or other persons responsible for a child to provide necessary care for a child. The parties involved are generally family members and solutions involve interventions with the family. Occasionally, civil court intervention is required to assure safety and order services for the family.

The definitions of physical abuse and sexual abuse include harm to a child by any other person. Therefore, physical or sexual abuse of a child by a parent is included, as are assaults by strangers, persons unrelated to a child's family, and peers. In cases where the child is harmed by someone outside of the family, interventions with the family do not provide all of the solutions. In many of these cases, law enforcement involvement through the criminal system is nec-

essary to intervene with the person who harmed the child.

Because public perception of what constitutes child maltreatment generally is limited to harm caused by a child's parents or other family or household member, it is important to understand that statistics in Wisconsin include physical injury to a child or sexual contact with a child by any other person. The category where the data is most influenced by non-familial maltreatment is the category of sexual abuse. Wisconsin totals include a number of cases of sexual assault by peers (from unwanted touching to "date rape"). Tables presented in the report show totals that allow a reader to distinguish between abuse of a child by a caregiver and assault of a child by another person.

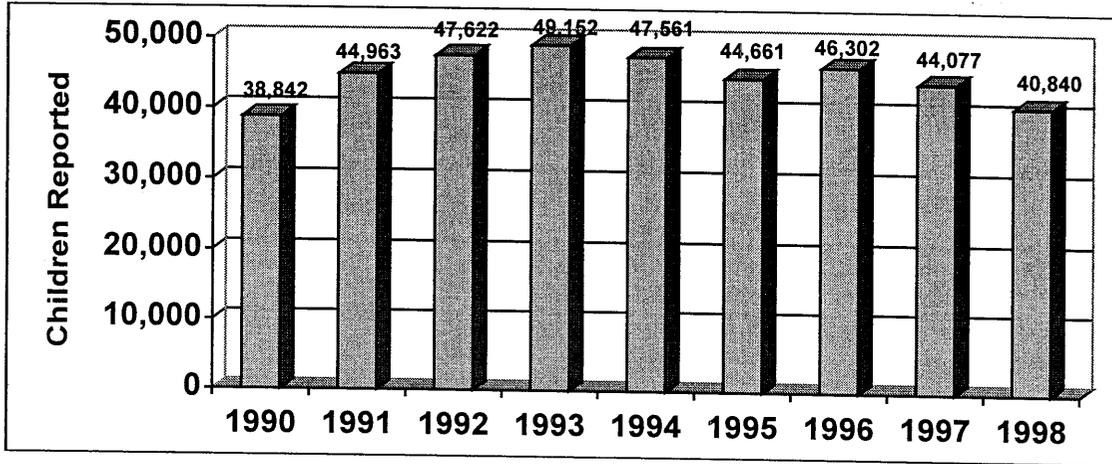
Sexual abuse also includes mutual sexual activity between minors if at least one of the minors is less than 16 years old. The fact that no coercion, exploitation or assault was involved is irrelevant.

The total number of cases of mutual sexual activity involving a minor under 16 years has been removed from the child maltreatment totals on some of the graphs and tables. These cases range from reports of pre-schoolers who inappropriately touch other pre-schoolers to reports of teenagers who are sexually active. Tables and graphs are clearly identified as to whether these cases are included in the totals

Information in this report is relayed almost entirely through graphs and tables and each is labeled to identify the year or years from which the data was compiled.

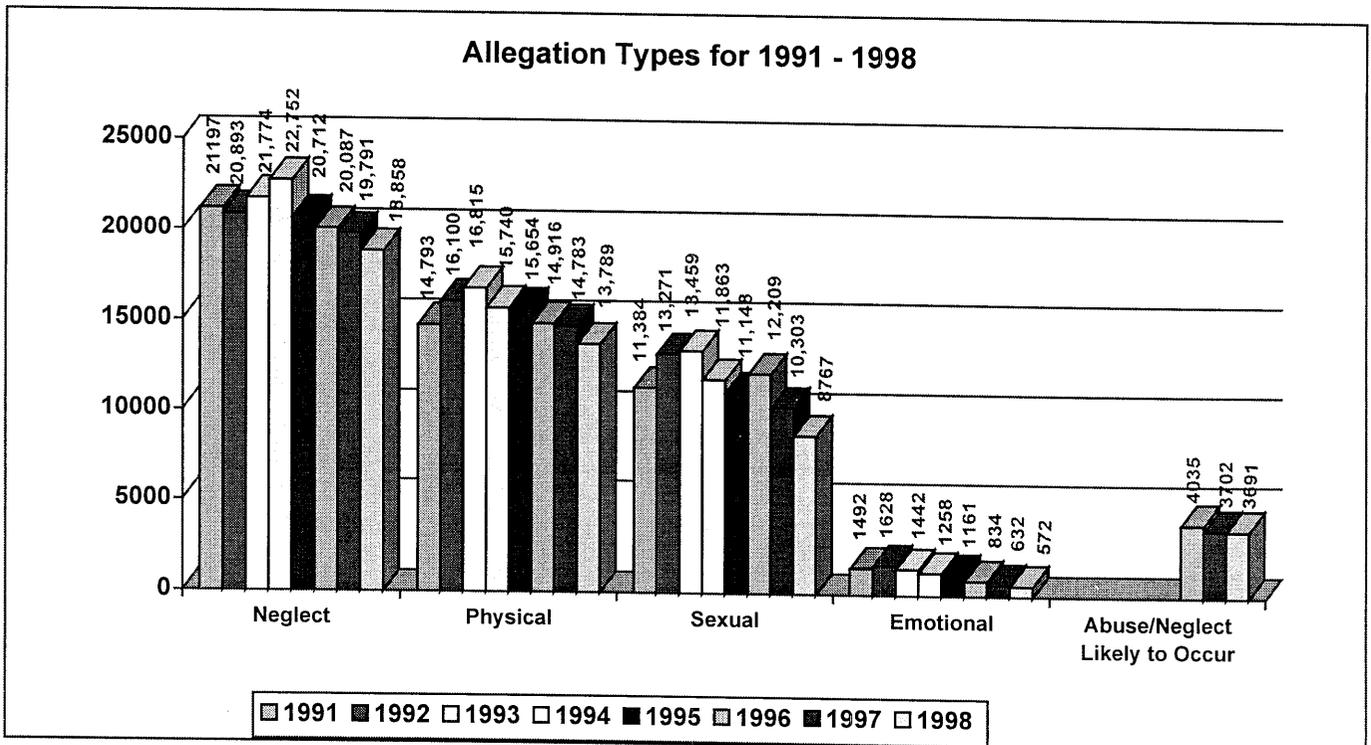
# HISTORICAL TRENDS

**FIGURE 1 NUMBER OF REPORTS OF CHILD MALTREATMENT  
LAST 9 YEARS (TOTALS FOR 1997 & 1998 DO NOT INCLUDE REPORTS OF MUTUAL SEXUAL ACTIVITY)**



**FIGURE 2 ALLEGATION TYPES FOR 1991-1998**

NOTE: TOTALS FOR SEXUAL ABUSE FOR 1997 & 1998 DO NOT INCLUDE REPORTS OF MUTUAL SEXUAL ACTIVITY



# CHILD MALTREATMENT

## REPORTERS AND THE INVESTIGATION ASSESSMENT

Certain individuals whose employment brings them into contact with children are required by law to report any suspected abuse or neglect they see in the course of their professional role. Anyone who suspects a child is being maltreated may make such a referral. Persons who report are immune from criminal or civil liability when making a report in good faith. Table 1 below describes the profession or relationship to the child of persons who reported suspected child maltreatment in 1997 and 1998.

Wisconsin's decentralized reporting system allows any concerned individual to report suspected abuse or neglect directly to a county department of social or human services (BMCW in Milwaukee) or a local law enforcement agency. (See listing of where to report in Appendix B.) Any report received by law enforcement officials is subsequently referred to the county department.

Upon receiving a report, the agency must first determine if the information constitutes an allegation of child maltreatment or threatened harm as defined by the statutes. If the report is screened in as an appropriate concern of child maltreatment, the Child Protective Services (CPS) worker in the agency must initiate an investigation assessment within 24 hours of the receipt of the report and complete it within 60 days.

The focus of the CPS assessment is not to establish legal culpability (cases are referred to law enforcement and then possibly to court for

that purpose), but to assure the child's safety and to determine whether the child and family are in need of support services. The investigation assessment must be conducted in accordance with standards established by the Wisconsin Department of Health & Family Services. Established in September of 1994, the Child Protective Service Investigation Standards recognize that the CPS role must differ in cases of familial and nonfamilial maltreatment.

In cases of familial maltreatment, the investigation assessment includes an interview with and observation of the child, a visit to the home, an interview with any siblings and an interview with the parents. Decisions which must be made include whether maltreatment occurred, whether the child is safe, whether risk conditions are present and whether the family is in need of services to assure safety and well-being. Many elements enter into the decision-making process: the child's functioning and ability to communicate, physical evidence, characteristics and behaviors of the parents, functioning of the family, and the absence or presence of stressful family circumstances.

In response to reports of maltreatment by individuals outside the family, the CPS role is to support the parents and other appropriate adults in meeting the child's needs. Respect for the privacy, values and rights of each family member underlies all aspects of investigative procedures. (See Appendix C, Child Abuse and Neglect Related Statutes, for categories of persons required to report child abuse and neglect.)

**TABLE 1**  
**REPORTER'S PROFESSION OR RELATIONSHIP TO CHILD**

Reporter	1997		1998	
	Frequency	Percent	Frequency	Percent
Teacher	2384	5.0	2529	5.7
School Counselor	4250	8.9	3841	8.6
School Administrator	1419	3.0	1309	2.9
Mental Health Professional	2164	4.5	2067	4.6
Social Worker	6073	12.7	5563	12.5
Public Assistance Worker	442	0.9	440	1.0
AODA Counselor	84	0.2	66	0.1
Daycare Center Staff	457	1.0	458	1.0
Home Daycare Provider	173	0.4	147	0.3
Physician	670	1.4	656	1.5
Nurse	1456	3.0	1312	2.9
Coroner or Medical Examiner	13	0	6	0
Dentist	18	0	14	0
Optometrist	3	0	2	0
Chiropractor	1	0	1	0
Physical Therapist	12	0	22	0
Occupational Therapist	15	0	13	0
Speech Therapist	31	0.1	18	0
Emergency Medical Technician	12	0	16	0
Ambulance Attendant	13	0	28	0.1
Other Medical Professional	294	0.6	370	0.8
Child Caring Institution Staff	220	0.5	217	0.5
Law Enforcement	9072	19.0	8155	18.3
Maltreater	101	0.2	114	0.3
Child Victim	559	1.2	518	1.2
Parent of Child Victim	4557	9.5	4234	9.5
Grandparent of Victim	1341	2.8	1415	3.2
Other Relative of Child Victim	1964	4.1	1940	4.4
Other Caregiver of Child Victim	443	0.9	431	1.0
Neighbor/Friend	3041	6.4	2855	6.4
Anonymous	3787	7.9	2894	6.5
Other*	2626	5.5	2770	6.2

- \* "Other" includes Acupuncturists and other categories not listed individually.

## CASE FINDINGS

Upon completion of an investigation assessment, the agency must determine whether abuse or neglect has occurred or is likely to occur. Case findings for allegations that maltreatment has occurred are "substantiated" and "unsubstantiated". Case findings for allegations that abuse or neglect is likely to occur are: "likely to occur" and "not found likely to occur".

For both types of cases, a third finding may be used: "not able to locate sources of information and/ or subjects of the report-unsubstantiated". This finding is to be used only when the agency is unable to locate critical family members or others involved in the report, making it impossible to gather the information needed to make a determination.

Prior to 1996, there were three different case findings: "substantiated", "unsubstantiated" and "not able to substantiate". These case findings were used for allegations that abuse or neglect occurred, as well as for allegations that abuse or neglect was likely to occur. Therefore, whereas in previous years "substantiated" cases included both types of allegations, beginning in 1996, "substantiated" cases refer only to cases where maltreatment has occurred.

The agency can determine that abuse or neglect has occurred or is likely to occur without making a formal finding that a particular person has maltreated or will maltreat a child. Therefore, the agency can identify and respond to children in need of protection or services even when a specific maltreater cannot be positively identified.

After conducting a thorough investigation assessment, the CPS worker must make the above determination based upon a preponderance of

the evidence. A preponderance of evidence is a lower standard of evidence than that needed for proof for juvenile or criminal court procedures. Therefore, a CPS worker may have sufficient information to substantiate an alleged child abuse or neglect case, but there may not be sufficient evidence for a juvenile court finding of Child in Need of Protection or Services (CHIPS) or for criminal court prosecution because of the higher burden of proof required.

A determination is made for each child and each type of alleged abuse or neglect. Because substantiation is not a prerequisite for services being offered, many families in which the maltreatment is not a clear-cut issue can still be provided services. The addition of in-home safety services to at-risk families that come to the attention of the Bureau of Milwaukee Child Welfare has greatly enhanced effective early intervention and response to both substantiated and unsubstantiated cases.

Unsubstantiated cases sometimes involve families where parents' care for their children is beginning to deteriorate because of life stresses or crises that they are having difficulty handling. Agencies often are able to assist these families in accessing other community resources and in receiving needed support before the family's problems become critical.

A county substantiation rate can vary widely based on the quality of information gathered at phone intake and the accuracy and thoroughness of information received from the reporter.

FIGURE 3A

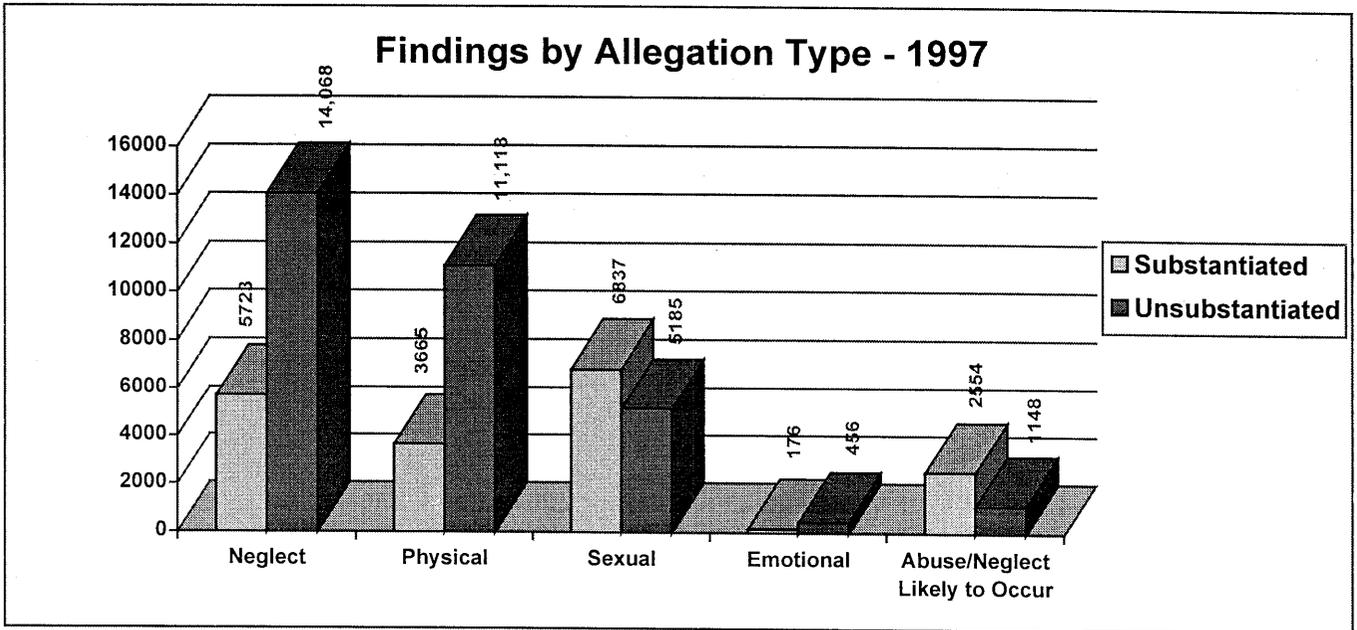
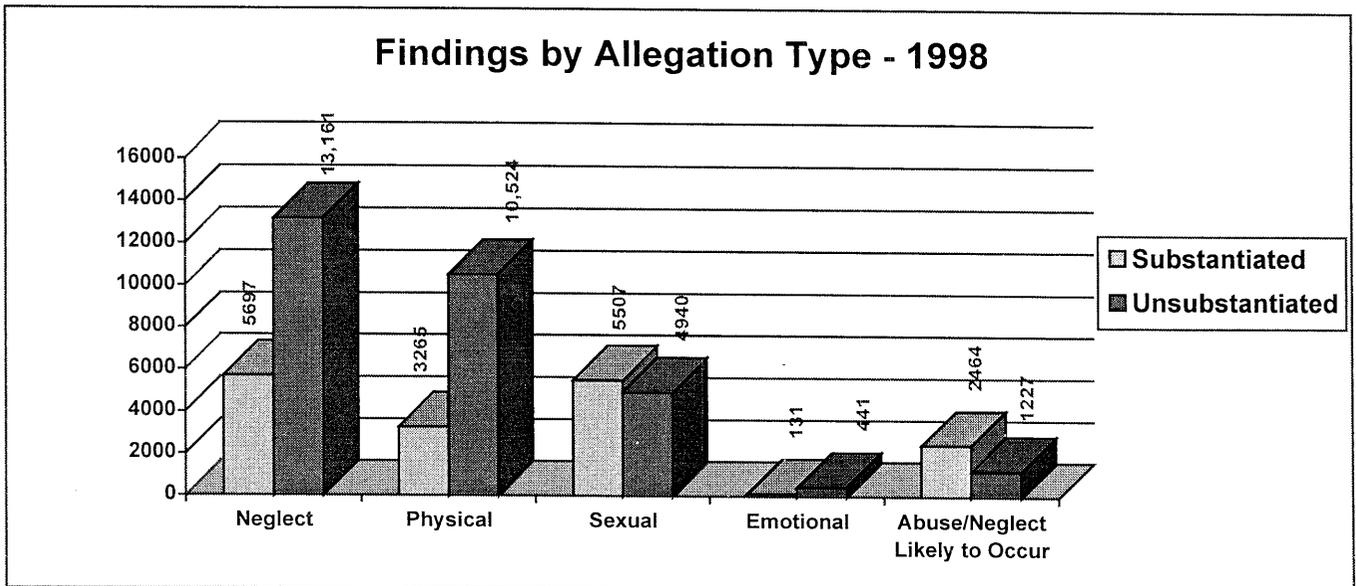


FIGURE 3B



## NUMBER OF REPORTS BY COUNTY

Child population figures in Tables 2A and 2B are derived from the official 1990 United States Census.

**TABLE 2A.**  
**1997 MALTREATMENT REPORTS AND ALLEGATIONS BY COUNTY**

	Child Population	Total Children Reported	Reports/ 1000	Abuse/Neglect Found Likely to Occur	Maltreatment Substantiations	Maltreatment Substantiation Rate
ADAMS	3304	105	31.8	5	38	0.36
ASHLAND	4417	173	39.2	0	52	0.30
BARRON	11300	497	44.0	7	159	0.32
BAYFIELD	3728	161	43.2	3	58	0.36
BROWN	52651	776	14.7	14	446	0.57
BUFFALO	3672	151	41.1	10	64	0.42
BURNETT	3273	261	79.7	21	80	0.31
CALUMET	10492	465	44.3	8	137	0.29
CHIPPEWA	14830	258	17.4	1	124	0.48
CLARK	9569	242	25.3	7	104	0.43
COLUMBIA	11877	188	15.8	5	112	0.60
CRAWFORD	4621	120	26.0	4	60	0.50
DANE	83337	1561	18.7	199	542	0.35
DODGE	20405	540	26.5	1	163	0.30
DOOR	6659	125	18.8	7	68	0.54
DOUGLAS	10681	885	82.9	45	322	0.36
DUNN	8847	185	20.9	5	46	0.25
EAU CLAIRE	21095	607	28.8	30	205	0.34
FLORENCE	1222	78	63.8	1	29	0.37
FOND DU LAC	24569	1175	47.8	314	555	0.47
FOREST	2381	149	62.6	2	70	0.47
GRANT	13176	420	31.9	85	122	0.29
GREEN	8269	193	23.3	0	99	0.51
GREEN LAKE	4846	213	44.0	1	92	0.43
IOWA	5761	217	37.7	5	50	0.23
IRON	1311	32	24.4	0	12	0.38
JACKSON	4502	58	12.9	1	19	0.33
JEFFERSON	17572	529	30.1	96	283	0.53
JUNEAU	5914	127	21.5	0	21	0.17
KENOSHA	34333	1046	30.5	15	278	0.27
KEWAUNEE	5315	88	16.6	0	41	0.47
LA CROSSE	24110	956	39.7	61	306	0.32
LAFAYETTE	4692	101	21.5	0	33	0.33
LANGLADE	5203	336	64.6	2	132	0.40
LINCOLN	7271	343	47.2	12	121	0.35
MANITOWOC	21336	1276	59.8	129	340	0.27
MARATHON	32453	1418	43.7	90	627	0.44

**TABLE 2A (CONTINUED)**  
**1997 MALTREATMENT REPORTS AND ALLEGATIONS BY COUNTY**

	Child Population	Total Children Reported	Reports/ 1000	Abuse/Neglect Found Likely to Occur	Maltreatment Substantiations	Maltreatment Substantiation Rate
MARINETTE	10898	331	30.4	14	72	0.22
MARQUETTE	3025	59	19.5	1	17	0.29
MENOMINEE	1600	163	101.9	2	61	0.37
MILWAUKEE	246302	12706	51.6	87	4319	0.34
MONROE	10692	425	39.7	48	158	0.37
OCONTO	8231	255	31.0	45	43	0.17
ONEIDA	7524	569	75.6	12	232	0.41
OUTAGAMIE	39920	1472	36.9	132	429	0.29
OZAUKEE	19685	417	21.2	117	116	0.28
PEPIN	2050	42	20.5	2	18	0.43
PIERCE	8848	288	32.5	39	109	0.38
POLK	9928	334	33.6	40	120	0.36
PORTAGE	15744	258	16.4	26	86	0.33
PRICE	4133	127	30.7	41	68	0.54
RACINE	48621	1276	26.2	3	627	0.49
RICHLAND	4760	73	15.3	0	27	0.37
ROCK	37859	2592	68.5	227	739	0.29
RUSK	4160	163	39.2	3	33	0.20
ST CROIX	15117	540	35.7	29	176	0.33
SAUK	12772	390	30.5	41	178	0.46
SAWYER	3716	164	44.1	8	64	0.39
SHAWANO	9980	339	34.0	5	96	0.28
SHEBOYGAN	27855	1378	49.5	86	377	0.27
TAYLOR	5710	259	45.4	21	95	0.37
TREMPEALEAU	6593	329	49.9	5	86	0.26
VERNON	7027	1	0.1	0	0	0
VILAS	3935	96	24.4	2	41	0.43
WALWORTH	17979	240	13.3	8	107	0.45
WASHBURN	3617	185	51.1	19	74	0.40
WASHINGTON	27043	342	12.6	17	109	0.32
WAUKESHA	93110	1063	11.4	130	560	0.53
WAUPACA	12383	313	25.3	22	116	0.37
WAUSHARA	4796	236	49.2	5	48	0.20
WINNEBAGO	33797	1029	30.4	62	419	0.41
WOOD	20532	644	31.4	34	358	0.56
UNKNOWN	0	643		35	213	0.33
<b>STATE TOTALS</b>	<b>1,288,982</b>	<b>45796</b>	<b>35.5</b>	<b>2554</b>	<b>16401</b>	<b>0.36</b>

**TABLE 2B.**  
**1998 MALTREATMENT REPORTS AND ALLEGATIONS BY COUNTY**

	Child Population	Total Chil- dren Reported	Reports/ 1000	Abuse/Neglect Found Likely to Occur	Maltreatment Substantiations	Maltreatment Substantiation Rate
ADAMS	3304	124	37.5	10	48	0.39
ASHLAND	4417	160	36.2	7	58	0.36
BARRON	11300	535	47.3	9	214	0.40
BAYFIELD	3728	342	91.7	30	92	0.27
BROWN	52651	672	12.8	15	410	0.61
BUFFALO	3672	176	47.9	7	61	0.35
BURNETT	3273	164	50.1	18	59	0.36
CALUMET	10492	336	32.0	10	117	0.35
CHIPPEWA	14830	314	21.2	3	126	0.40
CLARK	9569	166	17.3	3	78	0.47
COLUMBIA	11877	422	35.5	61	165	0.39
CRAWFORD	4621	133	28.8	6	61	0.46
DANE	83337	1434	17.2	161	508	0.35
DODGE	20405	423	20.7	4	110	0.26
DOOR	6659	109	16.4	6	52	0.48
DOUGLAS	10681	732	68.5	49	221	0.30
DUNN	8847	209	23.6	0	90	0.43
EAU CLAIRE	21095	384	18.2	19	134	0.35
FLORENCE	1222	72	58.9	7	35	0.49
FOND DU LAC	24569	709	28.9	172	345	0.49
FOREST	2381	147	61.7	4	64	0.44
GRANT	13176	485	36.8	83	128	0.26
GREEN	8269	168	20.3	0	48	0.29
GREEN LAKE	4846	163	33.6	5	33	0.20
IOWA	5761	251	43.6	10	56	0.22
IRON	1311	19	14.5	0	11	0.58
JACKSON	4502	68	15.1	2	22	0.32
JEFFERSON	17572	580	33.0	95	269	0.46
JUNEAU	5914	140	23.7	0	49	0.35
KENOSHA	34333	900	26.2	6	362	0.40
KEWAUNEE	5315	62	11.67	0	27	0.44
LA CROSSE	24110	812	33.7	123	262	0.32
LAFAYETTE	4692	140	29.8	8	50	0.36
LANGLADE	5203	510	98.0	31	211	0.41
LINCOLN	7271	329	45.2	15	114	0.35
MANITOWOC	21336	1179	55.3	128	300	0.25
MARATHON	32453	1423	43.8	35	549	0.39
MARINETTE	10898	338	31.0	8	80	0.24

**TABLE 2B (CONTINUED) AND ALLEGATIONS BY COUNTY  
1998 MALTREATMENT REPORTS**

	Child Population	Total Chil- dren Reported	Reports/ 1000	Abuse/Neglect Found Likely to Occur	Maltreatment Substantiations	Maltreatment Substantiation Rate
MARQUETTE	3025	38	12.6	5	6	0.16
MENOMINEE	1600	123	76.9	1	66	0.54
MILWAUKEE	246302	12593	51.1	259	4093	0.32
MONROE	10692	349	32.6	49	95	0.27
OCONTO	8231	124	15.1	17	21	0.17
ONEIDA	7524	562	74.7	17	254	0.45
OUTAGAMIE	39920	1427	35.7	46	352	0.25
OZAUKEE	19685	400	20.3	140	150	0.38
PEPIN	2050	39	19.0	0	14	0.36
PIERCE	8848	293	33.1	22	80	0.27
POLK	9928	267	26.9	44	95	0.36
PORTAGE	15744	247	15.7	17	85	0.34
PRICE	4133	91	22.0	18	20	0.22
RACINE	48621	1159	23.8	4	600	0.52
RICHLAND	4760	62	13.0	0	31	0.50
ROCK	37859	2418	63.9	238	590	0.24
RUSK	4160	197	47.4	4	65	0.33
ST CROIX	15117	375	24.8	24	110	0.29
SAUK	12772	395	30.9	41	159	0.40
SAWYER	3716	185	49.8	11	59	0.32
SHAWANO	9980	323	32.4	1	102	0.32
SHEBOYGAN	27855	1224	43.9	75	285	0.23
TAYLOR	5710	218	38.2	34	94	0.43
TREMPEALEAU	6593	270	41.0	0	75	0.28
VERNON	7027	NA	NA	NA	NA	NA
VILAS	3935	60	15.2	4	13	0.22
WALWORTH	17979	303	16.9	6	139	0.46
WASHBURN	3617	180	49.8	6	55	0.31
WASHINGTON	27043	305	11.3	15	107	0.35
WAUKESHA	93110	788	8.5	125	364	0.46
WAUPACA	12383	282	22.8	12	106	0.38
WAUSHARA	4796	207	43.2	3	44	0.21
WINNEBAGO	33797	1045	30.9	34	367	0.35
WOOD	20532	498	24.3	38	232	0.47
UNKNOWN	0	143		4	53	0.37
<b>STATE TOTALS</b>	<b>1,288,982</b>	<b>42520</b>	<b>33.0</b>	<b>2464</b>	<b>14600</b>	<b>0.34</b>

\* Reports are actually a count of children suspected of being maltreated. A child maltreatment case, which is documented on a child maltreatment form, may include more than one maltreatment victim, and there may be more than one allegation per victim. In this table the category, "Maltreatment Substantiations", does not include cases with the finding "Abuse/Neglect Found Likely to Occur". Reports of mutual sexual activity are included in the totals in this table.

# CHARACTERISTICS OF MALTREATED CHILDREN

FIGURE 4A

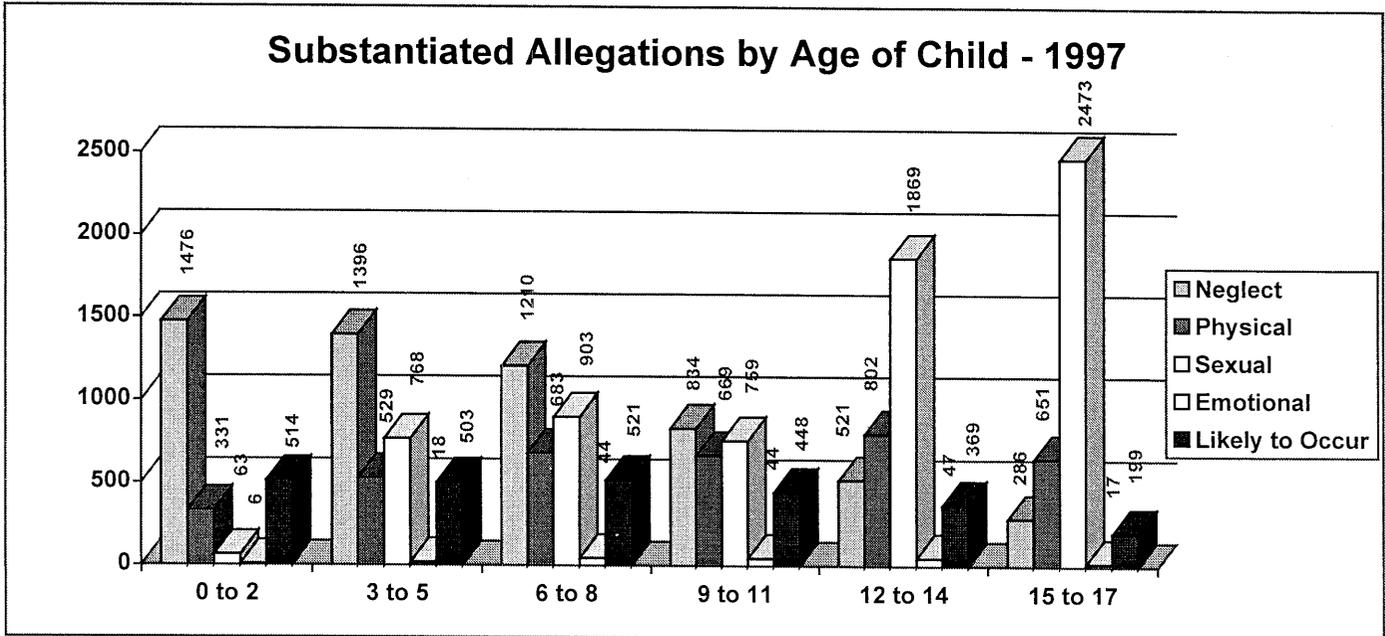


FIGURE 4B

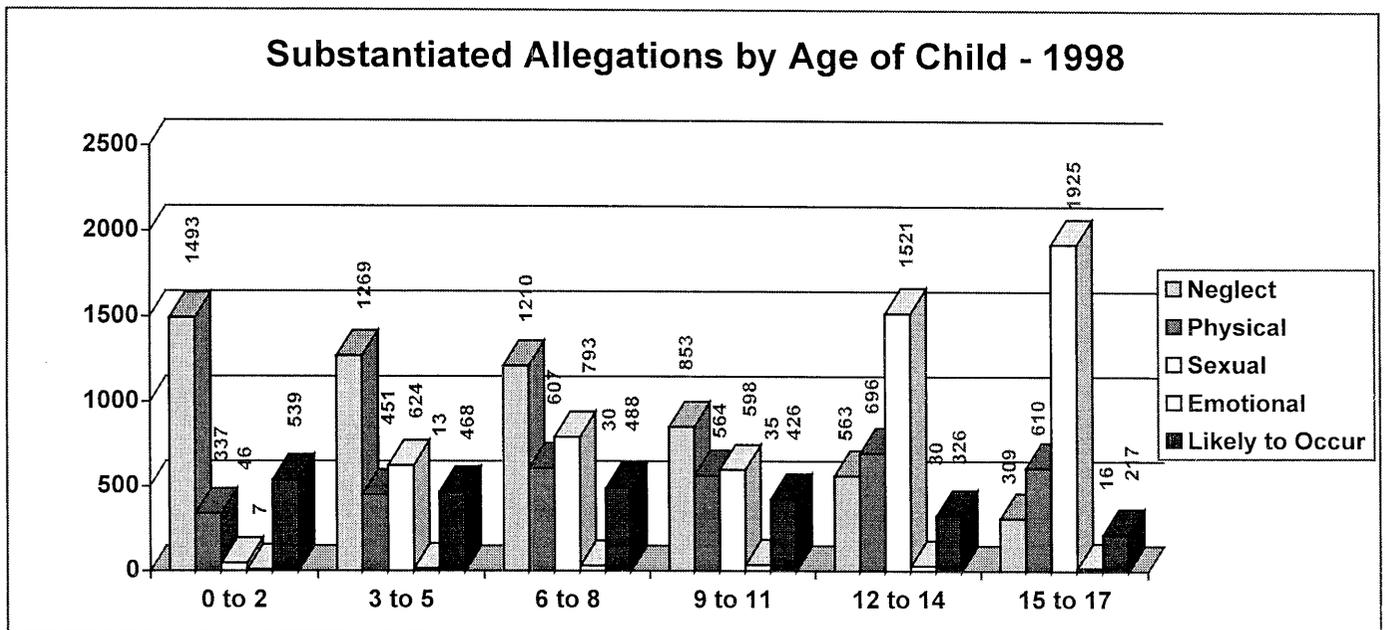


FIGURE 5A

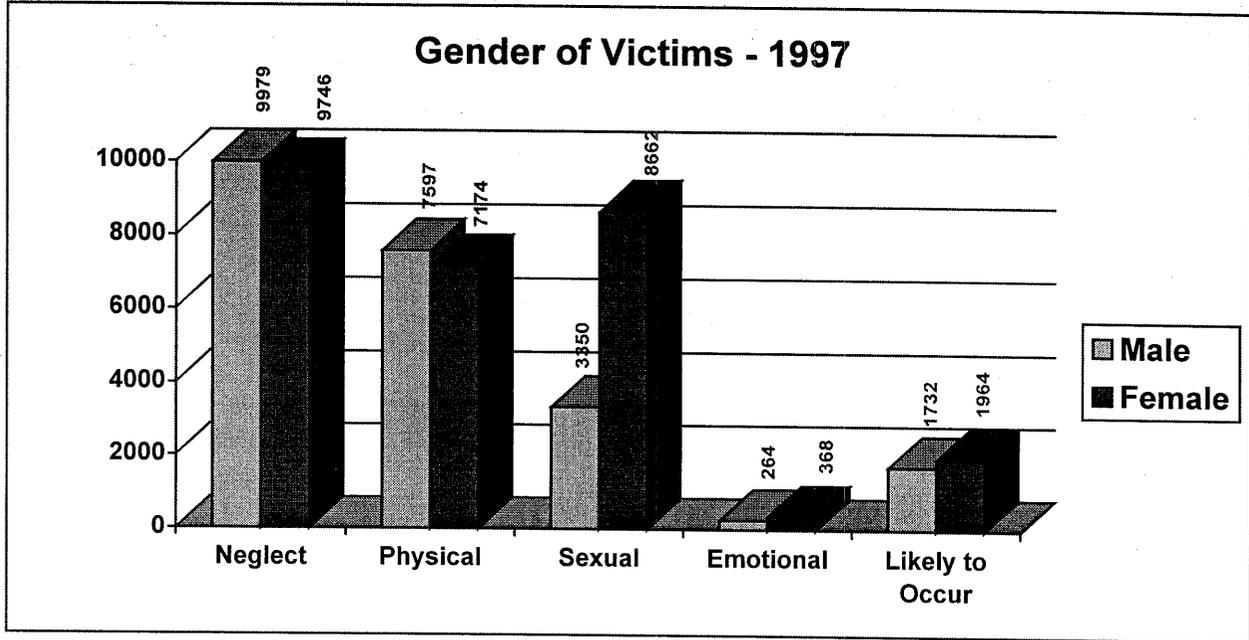
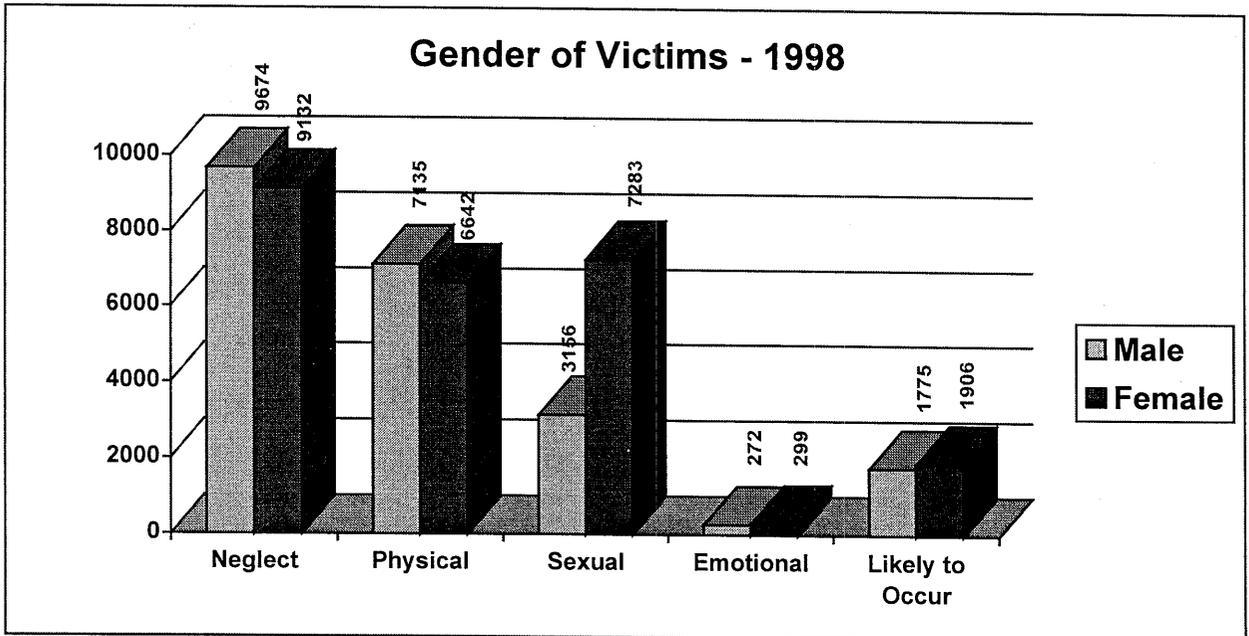


FIGURE 5B



## FATALITIES

The death of a child is one of the most tragic consequences of abuse and neglect. The role of Child Protective Services in the case of death by abuse or neglect is to assure the safety of any other children present in the family and to assess

the family's need for services. Investigations of the death are generally handled by law enforcement agencies. As noted in the following tables, fewer cases of child fatalities due to maltreatment were reported in 1998 than in 1997.

**TABLE 3A.**  
**1997 PROFILE OF CHILD FATALITIES**

County	Report Type	Finding	CHILD			MALTREATER			Relationship to child
			Age	Sex	Race	Age	Sex	Race	
Barron	Physical Abuse	S	0	M	W	20	M	W	Parent
Brown	Physical Abuse	S	1	M	I	16	M	I	Parent
Brown	Neglect	S	0	M	X	29	F	U	Parent
Brown	Neglect	S	0	F	I	34	F	I	Parent
Brown	Physical Abuse	N	3	M	W	28	M	W	Foster Parent
						27	F	W	Foster Parent
Fond du Lac	Lack of Supervision	S	2	F	W	41	F	W	Parent
Kenosha	Physical Abuse	S	1	M	B	U	M	B	Partner/friend of parent sharing child's dwelling
Kenosha	Neglect	U	1	F	W	22	F	W	Parent
LaCrosse	Physical Abuse	S	0	M	W	26	M	W	Parent
Marathon	Neglect	U	5	F	W	46	F	W	Relative in Home
Milwaukee	Physical Abuse	S	6	F	B	22	F	B	Step Parent
Milwaukee	Neglect	N	17	M	H	35	F	W	Neighbor
Milwaukee	Physical Abuse	S	8	M	W	35	F	W	Parent
Milwaukee	Physical Abuse	S	1	M	B	26	M	B	Partner/Friend of parent sharing child's dwelling
Milwaukee	Neglect	U	12	M	H	U	F	H	Relative in Home
Milwaukee	Physical Abuse	N	1	M	W	26	M	W	Partner/Friend of parent sharing child's dwelling
Outagamie	Physical Abuse	U	0	F	I	35	F	I	Parent
Outagamie	Physical Abuse	U	0	M	W	27	F	W	Certified Family Home Provider
						05	M	W	Other non-caregiver
Racine	Neglect	S	0	M	W	21	M	H	Parent
Racine	Neglect	S	5	M	B	35	M	B	Parent
Richland	Neglect	U	6	M	W	37	M	W	Parent
Rock	Neglect	S	6	M	B	35	F	B	Relative in Home
Rock	Neglect	S	4	F	B	35	F	B	Relative in Home
Walworth	Neglect	S	0	M	W	33	F	W	Parent
Unknown	Neglect	S	0	F	B	35	F	B	Foster Parent
Unknown	Neglect	S	2	F	B	25	F	B	Foster Parent

**TABLE 3B.**  
**1998 PROFILE OF CHILD FATALITIES**

County	Report Type	Finding	CHILD			MALTREATER			Relationship to child
			Age	Sex	Race	Age	Sex	Race	
Crawford	Physical Abuse	U	2	M	W	U	F	W	Parent
Dane	Physical Abuse	S	0	F	H	40	M	W	Parent
Dane	Physical Abuse	S	14	F	W	20	F	H	Other Secondary Care-giver
Kenosha	Neglect	S	1	M	B	39	M	W	Parent
LaCrosse	Physical Abuse	U	2	M	W	15	F	W	Parent
Marathon	Neglect	U	7	F	A	40	M	W	Parent
Marinette	Physical Abuse	S	12	F	W	42	F	W	Parent
Milwaukee	Physical Abuse	S	2	M	B	38	F	A	Parent
Milwaukee	Neglect	S	1	F	H	43	M	A	Parent
Milwaukee	Physical Abuse	S	1	M	B	49	M	W	Partner/friend of parent sharing child's dwelling
Milwaukee	Physical Abuse	S	0	M	B	13	F	B	Peer Maltreater
Outagamie	Physical Abuse	U	0	M	W	19	M	W	Partner/friend of parent sharing child's dwelling
Richland	Physical Abuse	S	1	M	B	19	M	B	Partner/friend of parent sharing child's dwelling
Sauk	Sexual Abuse	S	11	F	W	30	F	B	Parent
Taylor	Neglect	U	0	M	W	26	M	W	Parent
Winnebago	Neglect	S	0	F	W	22	M	W	Partner/Friend of parent sharing child's dwelling
Wood	Physical Abuse	S	0	M	W	22	F	W	Partner/Friend of parent sharing child's dwelling
Menominee	Physical Abuse	S	0	F	I	21	M	W	Certified Family Home Provider
						34	F	I	Parent

**Sex/Race**

F - Female

M - Male

W - White

B - Black

I - American Indian

H - Hispanic

U - Unknown

**Finding**

S -Substantiated

U -Unsubstantiated

N - Not able to locate sources of information/subjects of report/  
unsubstantiated

## RELATIONSHIP OF ASSUMED MALTREATER TO CHILD

When the agency makes a determination that a report of maltreatment is substantiated, the determination does not necessarily include a specific finding as to who maltreated the child. However, in the course of the investigation assessment, the agency worker often makes judgments about who has harmed or is failing to protect a child as part of assessing the child's safety needs. In this report, statistical data collected regarding assumed maltreaters reflects social worker judgments rather than legal determinations that a person has maltreated a child.

Cases of mutual sexual activity are not included in this table as there is no maltreater in such cases. By definition, the sexual activity involved is mutual. These cases include children 15 years old or younger who engage in sexual contact or intercourse as defined by the statutes, but where there is no coercion, exploitation or assaultive behavior involved. There were 1,719 such cases reported in 1997 and 1,680 such cases reported in 1998.

**TABLE 4A**

### RELATIONSHIP OF ASSUMED MALTREATER TO CHILD (SUBSTANTIATED CASES ONLY) 1997

	Neglect	Physical	Sexual	Emotional	Likely to Occur	%
<b>Primary Caregivers</b>						
Parent/Step parent	6024	2598	461	162	2591	61.49
Partner or friend sharing dwelling	164	329	206	15	180	4.64
Siblings/Step siblings	28	161	408	5	72	3.50
Other close relative/household member	130	125	269	4	30	2.90
Foster Parents	55	66	7	3	38	0.88
Others sharing foster home	3	7	46	1	1	0.30
Other primary caregivers	16	10	20	6	7	0.31
<b>Secondary Caregivers</b>						
Licensed/Certified Child Care Provider	21	17	8	0	11	0.30
Other Child Care Provider	56	36	94	0	21	1.08
Teacher/other school employee	0	23	35	1	4	0.33
Residential facility staff	1	9	5	0	0	0.08
Correctional facility staff	0	1	0	0	0	0.01
Youth Organization Staff/Volunteer	0	0	5	0	0	0.03
Relative-not in home	21	41	314	3	7	2.01
Other secondary caregivers	16	22	58	0	12	0.56
<b>Non-Caregivers</b>						
Stranger	3	28	182	0	3	1.12
Neighbor	5	27	302	0	15	1.81
Family Friend	15	59	499	0	14	3.05
Peer Maltreater	0	124	1562	2	18	8.86
Other non-caregiver	8	46	820	1	13	4.61
Unknown	6	56	336	0	14	2.14
<b>Total</b>	<b>6572</b>	<b>3785</b>	<b>5637</b>	<b>203</b>	<b>3051</b>	<b>100.00</b>

**TABLE 4B**  
**RELATIONSHIP OF ASSUMED MALTREATER TO CHILD (SUBSTANTIATED CASES ONLY) 1998**

	Neglect	Physical	Sexual	Emotional	Likely to Occur	%
<b>Primary Caregivers</b>						
Parent/Step parent	6256	2321	398	135	2444	65.51
Partner or friend sharing dwelling	139	330	174	5	157	4.56
Siblings/Step siblings	21	166	373	1	54	3.49
Relatives in Home	156	113	228	1	78	3.27
Foster Parents	5	26	3	6	13	0.30
Others sharing foster home	0	9	23	0	2	0.19
Other primary caregivers	29	27	14	3	6	0.45
<b>Secondary Caregivers</b>						
Licensed/Certified Child Care Provider	5	12	2	0	9	0.16
Other Child Care Provider	32	38	88	0	4	0.92
Teacher/other school employee	0	29	23	1	1	0.31
Residential facility staff	7	4	7	0	1	0.11
Correctional facility staff	0	0	1	0	0	0.01
Youth Organization Staff/Volunteer	0	0	3	0	0	0.02
Relative-not in home	33	32	302	1	12	2.15
Other secondary caregivers	16	14	41	1	7	0.45
<b>Non-Caregivers</b>						
Stranger	2	14	143	1	0	0.91
Neighbor	1	23	209	0	5	1.35
Family Friend	19	46	391	1	24	2.73
Peer Maltreater	2	119	1157	0	24	7.38
Other non-caregiver	2	52	704	0	14	4.38
Unknown	10	67	150	2	12	1.37
<b>Total</b>	<b>6735</b>	<b>3442</b>	<b>4434</b>	<b>158</b>	<b>2867</b>	<b>100.00</b>

FIGURE 6A

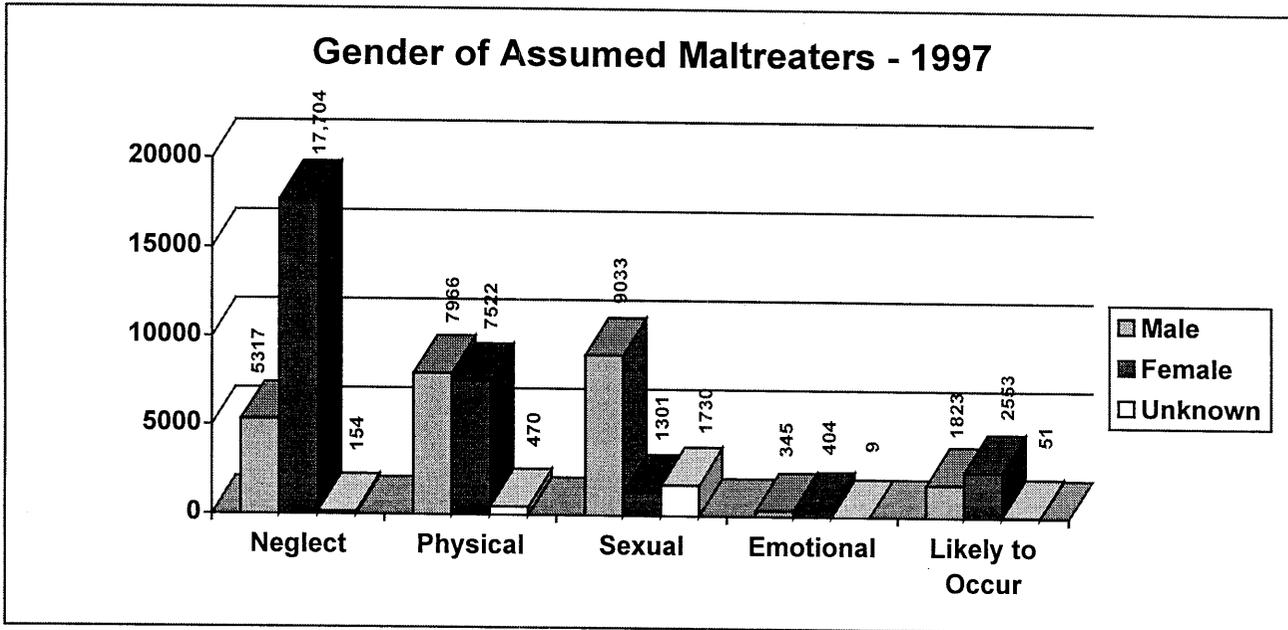
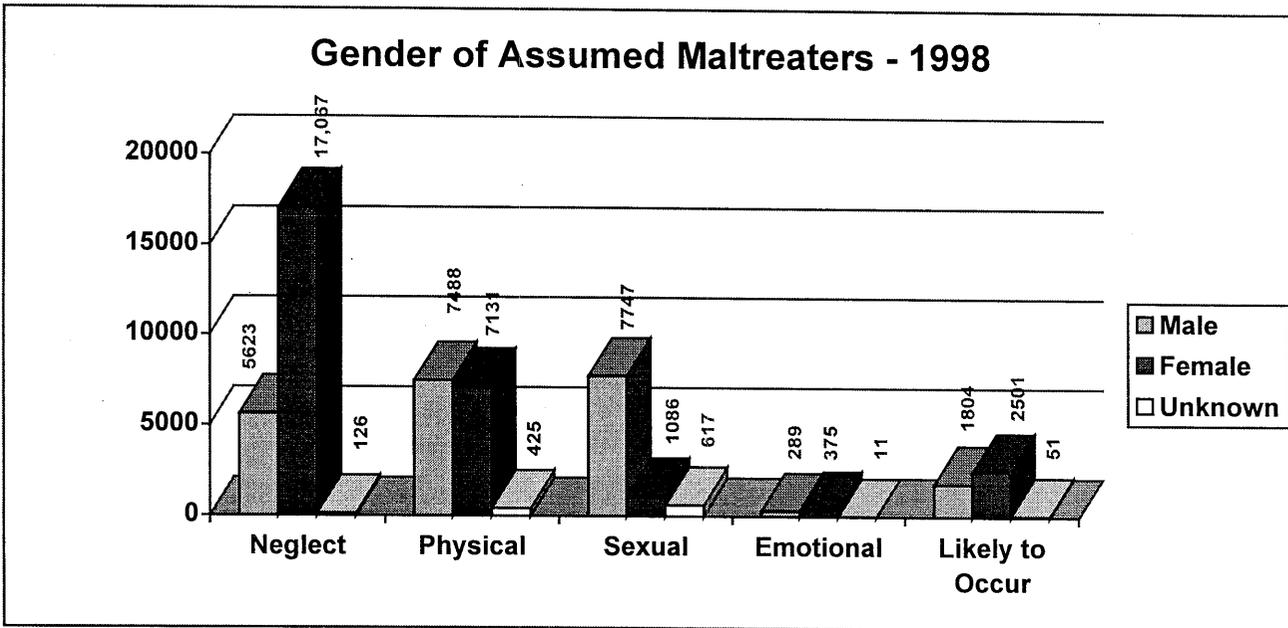


Figure 6B



## SERVICE TO FAMILIES

If a child is determined to be unsafe as part of the investigation, the county agency provides services designed to control those conditions making the child unsafe. "Safety services" are provided in the home whenever possible, to maintain and support the family unit. If in-home services would be insufficient to assure the safety of the child, every effort is made to place the child temporarily in an alternate placement. Safety services differ from treatment

services in that they are not intended to change behavior or impact underlying causes of child maltreatment over the course of treatment. Rather, they must immediately control any conditions or behaviors that place a child in danger. The following tables describe the safety services provided to families during or immediately following completion of the investigation. Treatment services, provided to families later during the course of treatment, are not reflected here.

**TABLE 5A**  
**FAMILY SAFETY SERVICES BY TYPE OF MALTREATMENT - 1997**

Safety Service Provided	Neglect		Physical		Sexual		Emotional		Likely to Occur	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>Out of Home Care</b>	2001	10.1	1138	7.7	574	4.8	69	10.9	508	13.7
<b>Child Remaining in Home</b>	3009	15.2	2295	15.5	1481	12.3	99	15.7	626	16.9
Supervision/observation	1442	7.3	1089	7.4	620	5.2	88	13.9	461	12.5
AODA services	478	2.4	196	1.3	78	0.6	17	2.7	117	3.2
Mental Health services	596	3.0	900	6.1	809	6.7	106	16.8	291	7.9
Hospitalization	40	0.2	42	0.3	24	0.2	2	0.3	15	0.4
Medical care	253	1.3	88	0.6	131	1.1	4	0.6	33	0.9
Day Care	228	1.2	74	0.5	10	0.1	4	0.6	35	0.9
Respite Care	119	0.6	139	0.9	24	0.2	14	2.2	70	1.9
Child-oriented activity	59	0.3	61	0.4	17	0.1	7	1.1	30	0.8
Unique child condition service	58	0.3	66	0.4	33	0.3	2	0.3	12	0.3
Basic home mgmt./life skills	344	1.7	104	0.7	27	0.2	10	1.6	40	1.1
Basic parenting assistance- Parent-aide	799	4.0	585	4.0	127	1.1	38	6.0	242	6.5
Chore services-Parent-aide	41	0.2	22	0.1	6	0.0	0	0.0	4	0.1
Transportation	48	0.2	27	0.2	20	0.2	5	0.8	24	0.6
Food/clothing service	144	0.7	19	0.1	5	0.0	2	0.3	9	0.2
Housing	151	0.8	31	0.2	11	0.1	0	0.0	14	0.4
Financial services	251	1.3	66	0.4	26	0.2	6	0.9	30	0.8
Family crisis counseling	513	2.6	920	6.2	558	4.6	64	10.1	209	5.6
Social/emotional support	504	2.5	393	2.7	277	2.3	20	3.2	132	3.6
Individual crisis counseling	403	2.0	565	3.8	614	5.1	28	4.4	129	3.5
Other service	2296	11.6	1704	11.5	969	8.1	56	8.9	440	11.9
No Safety Services	11,689	59.1	8748	59.2	8188	68.1	331	52.4	1911	51.6

**TABLE 5B**  
**FAMILY SAFETY SERVICES BY TYPE OF MALTREATMENT - 1998**

Safety Service Provided	Neglect		Physical		Sexual		Emotional		Likely to Occur	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>Out of Home Care</b>	2376	12.6	1057	7.7	514	4.9	66	11.5	525	14.2
<b>Child Remaining in Home</b>	2466	13.1	1891	13.7	1223	11.7	74	12.9	617	16.7
Supervision/observation	1410	7.5	991	7.2	551	5.3	46	8.0	421	11.4
AODA services	667	3.5	200	1.5	58	0.6	8	1.4	150	4.1
Mental Health services	565	3.0	708	5.1	685	6.6	39	6.8	223	6.0
Hospitalization	30	0.2	25	0.2	12	0.1	2	0.3	8	0.2
Medical care	226	1.2	48	0.3	97	0.9	0	0	18	0.5
Day Care	291	1.5	108	0.8	16	0.2	3	0.5	64	1.7
Respite Care	122	0.6	131	1.0	26	0.2	1	0.2	34	0.9
Child-oriented activity	147	0.8	100	0.7	28	0.3	2	0.3	37	1.0
Unique child condition service	53	0.3	28	0.2	25	0.2	3	0.5	20	0.5
Basic home mgmt./life skills	548	2.9	128	0.9	32	0.3	4	0.7	71	1.9
Basic parenting assistance- Parent-aide	961	5.1	641	4.6	116	1.1	23	4.0	267	7.2
Chore services-Parent-aide	76	0.4	37	0.3	3	0.0	0	0	9	0.2
Transportation	70	0.4	33	0.2	9	0.1	0	0	20	0.5
Food/clothing service	123	0.7	35	0.3	4	0.0	0	0	11	0.3
Housing	305	1.6	95	0.7	11	0.1	2	0.3	31	0.8
Financial services	133	0.7	46	0.3	21	0.2	0	0	17	0.5
Family crisis counseling	350	1.9	641	4.6	423	4.0	39	6.8	201	5.4
Social/emotional support	493	2.6	397	2.9	214	2.0	16	2.8	156	4.2
Individual crisis counseling	287	1.5	339	2.5	443	4.2	16	2.8	130	3.5
Other service	1252	6.6	1106	8.0	811	7.8	42	7.3	403	10.9
<b>No Safety Services</b>	11977	63.5	9016	65.4	7359	70.4	375	65.6	1949	52.8

**TABLE 6**  
**INVESTIGATIVE DISPOSITIONS – 1997 AND 1998**

**SUBSTANTIATED NEGLECT REPORTS**

<b>Investigation Dispositions</b>	<b>1997 (Total =5723)</b>		<b>1998 (Total =5697)</b>	
	<b>Frequency</b>	<b>%</b>	<b>Frequency</b>	<b>%</b>
Case Closed-No additional services *	1254	21.9	826	14.5
Case Closed-Family refused services	456	8.0	257	4.5
Case Closed-Referred family for community services	1025	17.9	902	15.8
Case Closed-Cannot locate family members	81	1.4	92	1.6
Case Opened-Voluntary	439	7.7	424	7.4
Case Opened-Informal disposition	341	6.0	352	6.2
Case Opened-Chips petition/consent decree	1652	28.9	2291	40.2
Other Agency services	590	10.3	683	12.0
Case referred to law enforcement **	645	11.3	440	7.7
Agency initiated child abuse restraining order	12	0.2	4	0.1

**SUBSTANTIATED PHYSICAL ABUSE REPORTS**

<b>Investigation Dispositions</b>	<b>1997 (Total =3665)</b>		<b>1998 (Total = 3265)</b>	
	<b>Frequency</b>	<b>%</b>	<b>Frequency</b>	<b>%</b>
Case Closed-No additional services *	799	21.8	653	20.0
Case Closed-Family refused services	232	6.3	232	7.1
Case Closed-Referred family for community services	856	23.4	741	22.7
Case Closed-Cannot locate family members	27	0.7	38	1.2
Case Opened-Voluntary	337	9.2	226	6.9
Case Opened-Informal disposition	222	6.1	153	4.7
Case Opened-CHIPS petition/consent decree	690	18.8	760	23.3
Other agency services	444	12.1	422	12.9
Case referred to law enforcement **	893	24.4	659	20.2
Agency initiated child abuse restraining order	16	0.4	16	0.5

**SUBSTANTIATED SEXUAL ABUSE REPORTS (INCLUDES CASES OF MUTUAL SEXUAL ACTIVITY)**

<b>Investigation Dispositions</b>	<b>1997 (Total =6837)</b>		<b>1998 (Total = 5507)</b>	
	<b>Frequency</b>	<b>%</b>	<b>Frequency</b>	<b>%</b>
Case Closed-No additional services *	2346	34.3	1419	25.8
Case Closed-Family refused services	325	4.8	337	6.1
Case Closed-Referred family for community services	1959	28.7	1844	33.5
Case Closed-Cannot locate family members	38	0.6	51	0.9
Case Opened-Voluntary	289	4.2	214	3.9
Case Opened-Informal disposition	117	1.7	98	1.8
Case Opened-CHIPS petition/consent decree	332	4.9	357	6.5
Other agency services	760	11.1	758	13.8
Case referred to law enforcement **	2462	36.0	2179	39.6
Agency initiated child abuse restraining order	16	0.2	7	0.1

### SUBSTANTIATED EMOTIONAL ABUSE REPORTS

Investigation Dispositions	1997 (Total = 176)		1998 (Total = 131)	
	Frequency	%	Frequency	%
Case Closed-No additional services *	9	5.1	8	6.1
Case Closed-Family refused services	12	6.8	1	0.8
Case Closed-Referred family for community services	31	17.6	8	6.1
Case Closed-Cannot locate family members	2	1.1	1	0.8
Case Opened-Voluntary	42	23.9	12	9.2
Case Opened-Informal disposition	8	4.5	18	13.7
Case Opened-CHIPS petition/consent Decree	65	36.9	66	50.4
Other Agency services	30	17.0	16	12.2
Case referred to law enforcement **	34	19.3	30	22.9
Agency initiated child abuse restraining order	4	2.3	4	3.1

### REPORTS WHERE ABUSE/NEGLECT WAS FOUND LIKELY TO OCCUR

Investigation Dispositions	1997 (Total = 2554)		1998 (Total = 2464)	
	Frequency	%	Frequency	%
Case Closed-No additional services *	303	11.9	305	12.4
Case Closed-Family refused services	450	17.6	404	16.4
Case Closed-Referred family for community services	467	18.3	517	21.0
Case Closed-Cannot locate family members	44	1.7	43	1.7
Case Opened-Voluntary	438	17.1	358	14.5
Case Opened-Informal disposition	149	5.8	89	3.6
Case Opened-CHIPS petition/consent decree	459	18.0	528	21.4
Other agency services	346	13.5	309	12.5
Case referred to law enforcement **	265	10.4	259	10.5
Agency initiated child abuse restraining order	5	0.2	7	0.3

\* **Note:** The CPS worker may provide brief counseling or referral services to families as part of the investigation assessment. Those services are not reflected in these tables.

\*\* **Note:** Data regarding referral to law enforcement should not be construed as a lack of law enforcement involvement. Many referrals received by the local agencies come from law enforcement. In these situations, the CPS agency often works with the law enforcement agency to respond to the referral, but the case would not be captured statistically as a referral to law enforcement.

## APPENDIX A

**TABLE 7A**  
**1997 REPORTS BY COUNTY BY TYPE OF MALTREATMENT**

County	Total Reports	Allegations by Type																			
		Physical Abuse				Sexual Abuse				Neglect				Emotional Abuse				Abuse Likely to Occur			
		S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	NF	N	TOT
ADAMS	105	16	23	5	44	11	16	0	27	11	25	3	39	0	0	0	0	5	0	0	5
ASHLAND	173	14	34	8	56	24	26	5	55	12	49	10	71	2	0	0	2	0	4	1	5
BARRON	497	38	143	1	182	81	77	13	171	34	122	4	160	6	1	0	7	7	3	0	10
BAYFIELD	161	15	31	3	49	36	30	4	70	7	25	12	44	0	0	0	0	3	5	0	8
BROWN	776	73	106	20	199	179	101	20	300	194	87	9	290	0	0	0	0	14	1	0	15
BUFFALO	151	9	50	0	59	23	13	0	36	32	31	0	63	0	0	0	0	10	0	0	10
BURNETT	261	25	48	10	83	29	47	11	87	23	79	4	106	3	11	0	14	21	5	0	26
CALUMET	465	33	111	1	145	77	56	1	134	27	191	0	218	0	5	0	5	8	0	0	8
CHIPPEWA	258	26	56	0	82	90	42	4	136	8	40	2	50	0	3	0	3	1	3	0	4
CLARK	242	27	54	1	82	66	48	2	116	11	34	0	45	0	3	0	3	7	2	0	9
COLUMBIA	188	29	33	1	63	57	17	2	76	26	18	1	45	0	2	0	2	5	0	1	6
CRAWFORD	120	10	22	1	33	28	12	2	42	22	29	1	52	0	4	0	4	4	0	0	4
DANE	1561	155	415	19	589	203	138	18	359	181	356	31	568	3	34	1	38	199	99	7	305
DODGE	540	29	157	13	199	109	67	14	190	25	127	14	166	0	7	0	7	1	1	0	2
DOOR	125	8	30	1	39	39	6	4	49	21	11	0	32	0	1	0	1	7	0	0	7
DOUGLAS	885	80	119	9	208	114	105	17	236	127	254	32	413	1	1	0	2	45	40	4	89
DUNN	185	14	49	2	65	20	22	1	43	12	82	0	94	0	2	0	2	5	0	0	5
EAU CLAIRE	607	43	148	3	194	95	74	18	187	65	121	7	193	2	3	0	5	30	42	0	72
FLORENCE	78	6	15	0	21	20	9	0	29	3	21	0	24	0	1	0	1	1	8	0	9
FOND DU LAC	1175	111	252	4	367	218	139	4	361	201	286	7	494	25	26	0	51	314	5	4	323
FOREST	149	21	13	0	34	15	15	0	30	25	45	3	73	9	2	1	12	2	0	0	2
GRANT	420	19	123	0	142	58	37	4	99	45	128	4	177	0	7	0	7	85	0	2	87
GREEN	193	16	50	0	66	62	17	0	79	19	33	0	52	2	0	0	2	0	2	0	2
GREEN LAKE	213	42	50	0	92	20	13	0	33	26	64	0	90	4	4	0	8	1	0	3	4
IOWA	217	13	64	4	81	17	26	2	45	19	81	0	100	1	8	0	9	5	7	4	16
IRON	32	7	9	1	17	2	10	0	12	2	1	0	3	1	0	0	1	0	0	0	0
JACKSON	58	2	9	6	17	5	7	1	13	11	14	1	26	1	0	0	1	1	0	0	1
JEFFERSON	529	37	105	2	144	154	69	3	226	90	87	0	177	2	1	0	3	96	34	0	130
JUNEAU	127	5	35	2	42	3	14	1	18	13	55	5	73	0	0	0	0	0	1	0	1
KENOSHA	1046	108	355	11	474	70	98	10	178	95	334	12	441	5	7	0	12	15	4	3	22
KEWAUNEE	88	4	22	0	26	32	10	1	43	5	19	0	24	0	0	0	0	0	1	0	1
LA CROSSE	956	70	188	19	277	88	95	2	185	139	287	45	471	9	11	2	22	61	36	0	97
LAFAYETTE	101	10	22	0	32	17	5	9	31	6	32	0	38	0	0	0	0	0	1	2	3
LANGLADE	336	21	75	2	98	41	41	11	93	70	97	1	168	0	2	0	2	2	1	0	3
LINCOLN	343	18	97	3	118	58	50	4	112	45	77	5	127	0	3	0	3	12	1	0	13
MANITOWOC	1276	76	394	7	477	133	138	10	281	131	447	12	590	0	8	0	8	129	20	0	149
MARATHON	1418	135	347	4	486	254	144	15	413	223	287	7	517	15	10	0	25	90	2	4	96
MARINETTE	331	9	95	0	104	50	67	10	127	13	116	6	135	0	16	0	16	14	0	0	14
MARQUETTE	59	10	12	0	22	1	2	1	4	5	22	0	27	1	5	0	6	1	5	0	6
MILWAUKEE	12706	965	2506	348	3819	1404	672	192	2268	1932	4438	857	7227	18	33	2	53	87	112	28	227

**TABLE 7A (Continued)**  
**REPORTS BY COUNTY BY TYPE OF MALTREATMENT**

County	Total Reports	Allegations by Type																			
		Physical Abuse				Sexual Abuse				Neglect				Emotional Abuse				Abuse Likely to Occur			
		S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	NF	N	TOT
MONROE	425	58	111	0	169	44	35	0	79	55	115	9	179	1	7	0	8	48	40	1	89
OCONTO	255	8	70	7	85	21	41	10	72	14	89	11	114	0	4	0	4	45	5	0	50
ONEIDA	569	54	93	13	160	109	59	16	184	65	128	20	213	4	7	0	11	12	6	0	18
OUTAGAMIE	1472	67	427	4	498	201	178	1	380	160	439	9	608	1	21	0	22	132	36	4	172
OZAUKEE	417	27	126	8	161	34	33	4	71	50	115	17	182	5	26	0	31	117	20	3	140
PEPIN	42	3	10	0	13	12	9	1	22	3	2	1	6	0	0	0	0	2	0	0	2
PIERCE	288	28	75	14	117	38	15	4	57	42	78	4	124	1	6	0	7	39	8	0	47
POLK	334	37	100	3	140	56	39	3	98	26	75	0	101	1	3	0	4	40	98	0	138
PORTAGE	258	14	64	6	84	63	32	13	108	9	52	0	61	0	0	0	0	26	6	0	32
PRICE	127	17	16	0	33	22	15	0	37	24	40	0	64	5	3	0	8	41	6	1	48
RACINE	1276	112	195	24	331	388	143	40	571	127	234	13	374	0	0	0	0	3	9	0	12
RICHLAND	73	12	17	0	29	14	9	2	25	1	18	0	19	0	0	0	0	0	0	0	0
ROCK	2592	184	668	17	869	246	309	23	578	299	759	35	1093	10	41	0	51	227	169	9	405
RUSK	163	4	65	0	69	23	26	3	52	6	34	0	40	0	4	0	4	3	1	1	5
ST CROIX	540	21	131	1	153	103	68	0	171	49	176	0	225	3	7	0	10	29	7	0	36
SAUK	390	53	87	0	140	64	46	2	112	57	88	1	146	4	1	0	5	41	1	0	42
SAWYER	164	17	28	1	46	18	12	2	32	29	52	1	82	0	1	0	1	8	7	0	15
SHAWANO	339	22	88	2	112	42	23	4	69	32	134	1	167	0	0	0	0	5	0	3	8
SHEBOYGAN	1378	65	330	7	402	162	192	12	366	144	482	9	635	6	38	1	45	86	21	0	107
TAYLOR	259	12	53	0	65	75	33	0	108	8	81	0	89	0	11	0	11	21	8	2	31
TREMPEALEAU	329	15	67	3	85	47	46	4	97	24	120	7	151	0	6	0	6	5	4	0	9
VERNON	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
VILAS	96	16	29	1	46	15	21	0	36	10	4	0	14	0	0	0	0	2	0	0	2
WALWORTH	240	35	43	1	79	24	30	1	55	46	57	1	104	2	4	0	6	8	1	2	11
WASHBURN	185	15	31	5	51	27	12	4	43	28	48	4	80	4	6	0	10	19	14	1	34
WASHINGTON	342	34	119	0	153	52	34	0	86	23	79	2	104	0	2	0	2	17	6	1	24
WAUKESHA	1063	83	203	1	287	354	118	6	478	113	112	0	225	10	13	0	23	130	66	4	200
WAUPACA	313	30	68	1	99	57	37	1	95	28	79	2	109	1	1	1	3	22	11	0	33
WAUSHARA	236	11	96	2	109	24	24	3	51	13	65	1	79	0	5	0	5	5	0	1	6
WINNEBAGO	1029	68	181	1	250	227	147	37	411	120	223	0	343	4	6	0	10	62	40	2	104
WOOD	644	97	150	11	258	188	99	10	297	70	38	2	110	3	1	0	4	34	0	1	35
MENOMINEE	163	18	46	3	67	15	13	5	33	28	38	0	66	0	0	0	0	2	3	0	5
UNKNOWN	643	79	212	4	295	69	81	4	154	64	113	4	181	1	3	0	4	35	7	4	46
<b>STATE TOTALS</b>	<b>45796</b>	<b>3665</b>	<b>10467</b>	<b>651</b>	<b>14783</b>	<b>6837</b>	<b>4554</b>	<b>631</b>	<b>12022</b>	<b>5723</b>	<b>12819</b>	<b>1249</b>	<b>19791</b>	<b>176</b>	<b>448</b>	<b>8</b>	<b>632</b>	<b>2554</b>	<b>1045</b>	<b>103</b>	<b>3702</b>

\* The sum of the totals of each type of allegation may exceed the total number of reports because there may be more than one allegation per report. The totals for sexual abuse include cases of mutual sexual activity.

**TABLE 7B**  
**1998 REPORTS BY COUNTY BY TYPE OF MALTREATMENT**

County	Total Reports	Allegations by Type																			
		Physical Abuse				Sexual Abuse				Neglect				Emotional Abuse				Abuse Likely to Occur			
		S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	NF	N	TOT
ADAMS	124	6	34	1	41	25	18	5	48	17	26	1	44	0	1	0	1	10	0	1	11
ASHLAND	160	16	39	1	56	36	22	2	60	5	49	1	55	1	0	0	1	7	2	0	9
BARRON	535	53	120	8	181	105	75	9	189	55	116	6	177	1	4	0	5	9	5	1	15
BAYFIELD	342	12	94	3	109	52	67	2	121	28	82	9	119	0	0	0	0	30	2	0	32
BROWN	672	63	74	7	144	168	83	17	268	179	71	11	261	0	0	0	0	15	2	0	17
BUFFALO	176	15	53	0	68	34	27	2	63	12	35	3	50	0	4	0	4	7	2	2	11
BURNETT	164	11	34	0	45	41	25	3	69	7	46	2	55	0	0	0	0	18	0	0	18
CALUMET	336	17	112	0	129	75	54	1	130	25	76	0	101	0	0	0	0	10	1	1	12
CHIPPEWA	314	27	74	2	103	68	56	4	128	31	58	3	92	0	4	0	4	3	0	0	3
CLARK	166	17	37	1	55	60	42	1	103	1	7	0	8	0	0	0	0	3	0	0	3
COLUMBIA	422	31	78	3	112	78	27	0	105	55	72	4	131	1	4	0	5	61	52	2	115
CRAWFORD	133	17	26	6	49	22	19	0	41	21	29	0	50	1	1	0	2	6	0	0	6
DANE	1434	107	423	6	536	209	144	20	373	191	308	18	517	1	17	2	20	161	72	4	237
DODGE	423	27	127	2	156	64	48	11	123	19	120	7	146	0	3	0	3	4	1	0	5
DOOR	109	10	29	1	40	27	11	7	45	9	9	3	21	6	0	0	6	6	3	0	9
DOUGLAS	732	45	129	8	182	97	84	18	199	79	187	38	304	0	1	0	1	49	46	8	103
DUNN	209	14	50	1	65	47	30	1	78	29	43	1	73	0	0	0	0	0	5	0	5
EAU CLAIRE	384	32	82	4	118	80	43	8	131	21	78	1	100	1	0	0	1	19	33	3	55
FLORENCE	72	6	13	1	20	9	7	0	16	18	10	0	28	2	4	0	6	7	4	0	11
FOND DU LAC	709	61	128	3	192	160	98	8	266	118	117	10	245	6	6	0	12	172	5	1	178
FOREST	147	10	26	0	36	7	11	0	18	45	39	0	84	2	4	0	6	4	2	0	6
GRANT	485	18	115	1	134	69	65	4	138	41	162	5	208	0	7	0	7	83	0	0	83
GREEN	168	17	61	1	79	22	18	1	41	9	44	2	55	0	0	0	0	0	1	0	1
GREEN LAKE	163	16	51	6	73	9	23	0	32	8	37	8	53	0	6	2	8	5	5	1	11
IOWA	251	18	63	0	81	14	27	2	43	23	92	1	116	1	15	0	16	10	5	0	15
IRON	19	6	5	0	11	2	3	0	5	2	0	0	2	1	0	0	1	0	0	1	1
JACKSON	68	2	11	1	14	17	17	4	38	3	7	7	17	0	0	1	1	2	0	0	2
JEFFERSON	580	37	81	0	118	155	81	3	239	77	143	7	227	0	0	0	0	95	40	1	136
JUNEAU	140	7	32	3	42	20	13	5	38	22	50	1	73	0	3	0	3	0	0	0	0
KENOSHA	900	131	304	3	438	70	87	3	160	134	228	12	374	27	5	0	32	6	8	0	14
KEWAUNEE	62	3	18	1	22	23	8	3	34	1	6	0	7	0	0	0	0	0	0	0	0
LA CROSSE	812	62	173	2	237	101	80	7	188	98	264	8	370	1	13	0	14	123	16	1	140
LAFAYETTE	140	7	42	0	49	33	15	3	51	8	38	0	46	2	3	0	5	8	0	0	8
LANGLADE	510	28	81	10	119	62	33	15	110	120	137	20	277	1	8	2	11	31	0	1	32
LINCOLN	329	30	79	7	116	61	66	8	135	22	73	1	96	1	0	0	1	15	2	1	18
MANITOWOC	1179	52	351	0	403	116	131	4	251	131	450	10	591	1	44	2	47	128	36	4	168
MARATHON	1423	113	345	9	467	268	161	12	441	159	337	8	504	9	16	0	25	35	9	3	47
MARINETTE	338	9	89	2	100	57	65	5	127	14	122	12	148	0	25	0	25	8	0	0	8
MARQUETTE	38	3	17	1	21	2	4	1	7	1	9	0	10	0	0	0	0	5	0	0	5
MILWAUKEE	12593	1136	2675	422	4233	558	603	201	1362	2371	4164	870	7405	28	51	11	90	259	253	88	600
MONROE	349	23	90	1	114	24	19	2	45	48	126	0	174	0	3	0	3	49	25	0	74

**TABLE 7B (Continued)**  
**REPORTS BY COUNTY BY TYPE OF MALTREATMENT**

County	Total Reports	Allegations by Type																			
		Physical Abuse				Sexual Abuse				Neglect				Emotional Abuse				Abuse Likely to Occur			
		S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	U	N	TOT	S	NF	N	TOT
OCONTO	124	4	34	2	40	5	22	0	27	12	42	4	58	0	0	0	0	17	1	0	18
ONEIDA	562	39	82	11	132	143	49	22	214	69	134	15	218	3	4	0	7	17	3	0	20
OUTAGAMIE	1427	61	420	8	489	175	195	5	375	115	517	7	639	1	24	0	25	46	5	0	51
OZAUKEE	400	32	115	1	148	58	47	2	107	59	89	10	158	1	7	0	8	140	22	4	166
PEPIN	39	6	14	0	20	3	0	1	4	4	14	0	18	1	0	0	1	0	1	0	1
PIERCE	293	20	83	3	106	44	32	12	88	13	83	14	110	3	1	3	7	22	1	0	23
POLK	267	33	72	6	111	46	42	4	92	14	52	5	71	2	4	0	6	44	51	2	97
PORTAGE	247	14	56	2	72	62	42	11	115	9	41	7	57	0	2	0	2	17	3	1	21
PRICE	91	10	34	0	44	6	20	0	26	4	15	0	19	0	3	0	3	18	2	1	21
RACINE	1159	85	187	8	280	351	127	22	500	164	218	5	387	0	1	0	1	4	10	0	14
RICHLAND	62	10	20	1	31	17	9	0	26	4	0	1	5	0	0	0	0	0	0	0	0
ROCK	2418	140	702	13	855	201	299	12	512	248	799	26	1073	1	42	0	43	238	160	6	404
RUSK	197	16	60	1	77	18	24	2	44	31	42	5	78	0	0	0	0	4	1	0	5
ST CROIX	375	12	85	0	97	65	43	4	112	32	137	2	171	1	7	0	8	24	3	0	27
SAUK	395	30	88	4	122	55	33	1	89	67	110	1	178	7	6	0	13	41	4	0	45
SAWYER	185	7	42	4	53	30	21	4	55	22	52	1	75	0	4	0	4	11	4	0	15
SHAWANO	323	15	83	1	99	67	34	1	102	20	109	3	132	0	0	0	0	1	1	0	2
SHEBOYGAN	1224	34	283	6	323	176	147	12	335	71	498	37	606	4	23	0	27	75	10	0	85
TAYLOR	218	14	36	0	50	53	40	0	93	27	58	0	85	0	7	0	7	34	21	8	63
TREMPEALEAU	270	20	75	0	95	44	35	2	81	11	77	13	101	0	5	0	5	0	2	0	2
VERNON																					
VILAS	60	3	26	0	29	5	7	0	12	5	10	0	15	0	0	0	0	4	3	0	7
WALWORTH	303	43	50	0	93	44	41	0	85	52	76	0	128	0	0	0	0	6	0	1	7
WASHBURN	180	9	53	0	62	32	21	7	60	13	31	4	48	1	1	1	3	6	5	4	15
WASHINGTON	305	34	101	1	136	53	41	6	100	20	49	0	69	0	1	0	1	15	2	0	17
WAUKESHA	788	70	123	2	195	184	101	3	288	106	83	0	189	4	3	1	8	125	59	1	185
WAUPACA	282	36	61	0	97	45	41	0	86	25	83	1	109	0	4	0	4	12	4	0	16
WAUSHARA	207	14	82	0	96	19	25	6	50	9	49	6	64	2	9	0	11	3	1	0	4
WINNEBAGO	1045	47	202	8	257	199	179	24	402	118	266	7	391	3	5	0	8	34	44	1	79
WOOD	498	73	122	2	197	120	111	9	240	37	35	2	74	2	1	0	3	38	0	0	38
MENOMINEE	123	14	20	3	37	15	13	4	32	37	17	1	55	0	0	0	0	1	2	1	4
UNKNOWN	143	5	31	2	38	25	10	1	36	22	36	5	63	1	0	0	1	4	8	3	15
<b>STATE TOTALS</b>	<b>42520</b>	<b>3265</b>	<b>9907</b>	<b>617</b>	<b>13789</b>	<b>5507</b>	<b>4361</b>	<b>579</b>	<b>10447</b>	<b>5697</b>	<b>11889</b>	<b>1272</b>	<b>18858</b>	<b>131</b>	<b>416</b>	<b>25</b>	<b>572</b>	<b>2464</b>	<b>1070</b>	<b>157</b>	<b>3691</b>

\* The sum of the totals of each type of allegation may exceed the total number of reports because there may be more than one allegation per report. The totals for sexual abuse include cases of mutual sexual activity.

**TABLE 8A**  
**1997 CHILD ABUSE AND NEGLECT DATA**  
**VICTIM RACE BY TYPE OF ABUSE AND NEGLECT (ALL REPORTS)**

Race of Victim	Neglect		Physical Abuse		Sexual Abuse		Emotional Abuse		Total
	No.	%	No.	%	No.	%	No.	%	No.
ASIAN	423	2.1	339	2.3	156	1.3	12	1.9	930
BLACK	6089	30.8	3005	20.3	1503	12.5	59	9.3	10,656
HISPANIC	932	4.7	690	4.7	409	3.4	21	3.3	2052
AMERICAN INDIAN	633	3.2	406	2.8	261	2.2	20	3.2	1320
WHITE	11,374	57.5	10,171	68.8	8908	74.1	518	82.0	30,971
UNKNOWN	340	1.7	172	1.2	785	6.5	2	0.3	1299
TOTAL	19,791	100	14,783	100	12,022	100	632	100	47,228

**TABLE 8B**  
**1998 CHILD ABUSE AND NEGLECT DATA**  
**VICTIM RACE BY TYPE OF ABUSE AND NEGLECT (ALL REPORTS)**

Race of Victim	Neglect		Physical Abuse		Sexual Abuse		Emotional Abuse		Total
	No.	%	No.	%	No.	%	No.	%	No.
ASIAN	412	2.2	288	2.1	134	1.3	3	0.5	837
BLACK	6004	31.8	2931	21.3	1147	11.0	41	7.2	10,123
HISPANIC	972	5.2	738	5.4	390	3.7	26	4.5	2126
AMERICAN INDIAN	566	3.0	292	2.1	227	2.2	1	0.2	1086
WHITE	10,498	55.7	9300	67.4	8280	79.3	497	86.9	28,575
UNKNOWN	406	2.2	240	1.7	269	2.6	4	0.7	919
TOTAL	18,858	100	13,789	100	10,447	100	572	100	43,666

**TABLE 9A**  
**1997 CHILD ABUSE AND NEGLECT DATA**  
**MALTREATOR RACE BY TYPE OF ABUSE AND NEGLECT (ALL REPORTS)**

Race of Maltreater	Neglect		Physical Abuse		Sexual Abuse		Emotional Abuse		Total
	No.	%	No.	%	No.	%	No.	%	No.
ASIAN	578	2.5	353	2.2	157	1.3	19	2.5	1107
BLACK	5962	25.7	2919	18.3	1360	11.3	50	6.6	10,291
HISPANIC	953	4.1	644	4.0	428	3.5	17	2.2	2042
AMERICAN INDIAN	700	3	350	2.2	173	1.4	19	2.5	1242
WHITE	14,566	62.9	11,005	69.0	7055	58.5	642	84.7	33,268
UNKNOWN	416	1.8	687	4.3	2891	24.0	11	1.5	4005
TOTAL	23,175	100	15,958	100	12,064	100	758	100	51,955

**TABLE 9B**  
**1998 CHILD ABUSE AND NEGLECT DATA**  
**MALTREATOR RACE BY TYPE OF ABUSE AND NEGLECT (ALL REPORTS)**

Race of Maltreater	Neglect		Physical Abuse		Sexual Abuse		Emotional Abuse		Total
	No.	%	No.	%	No.	%	No.	%	No.
ASIAN	568	2.5	300	2.0	125	1.3	6	0.9	999
BLACK	6068	26.6	2903	19.3	964	10.2	41	6.1	9976
HISPANIC	1014	4.4	685	4.6	439	4.6	28	4.1	2166
AMERICAN INDIAN	607	2.7	251	1.7	177	1.9	2	0.3	1037
WHITE	14,037	61.5	10,126	67.3	6386	67.6	589	87.3	31,138
UNKNOWN	522	2.3	779	5.2	1359	14.4	9	1.3	2669
TOTAL	22,816	100	15,044	100	9450	100	675	100	47,985

## APPENDIX B

### WHERE TO REPORT

Listed below are the county departments of social service and human service departments, which receive and investigate child abuse and neglect reports. Such reports may also be made to law enforcement agencies.

Adams County Dept. of Health & Social Services  
108 E. North Street  
P.O. Box 500  
Friendship WI 53934-0500  
Office Hours: 608-339-3356  
After Hours: 608-339-3304

Ashland County Dept. of Human Services  
301 Ellis Ave.  
Ashland WI 54806  
Office Hours: 715-682-7004  
After Hours: 715-682-7023

Barron County Department of Human Services  
330 East LaSalle Ave., Rm. 338  
Barron WI 54812  
Office Hours: 715-537-5691  
After Hours: 715-537-3106

Bayfield County Department of Human Services  
P.O. Box 100  
Washburn WI 54891-0100  
Office Hours: 715-373-6144  
After Hours: 715-373-6120

Brown County Human Services Department  
111 N. Jefferson Street  
P.O. Box 22188  
Green Bay WI 54305-2188  
Office Hours: 920-448-6035  
After Hours: 920-448-3200

Buffalo County Department of Health & Human Services  
407 S. Second St.  
P.O. Box 517  
Alma WI 54610-0517  
Office Hours: 608-685-4412  
After Hours: 608-685-4433

Burnett County Department of Health & Human Services  
County Government Center  
7410 County Road K #280  
Siren WI 54872  
Office Hours: 715-349-7600 or 715-349-2131  
After Hours: 715-349-2121

Calumet County Department of Human Services  
206 Court Street  
Chilton WI 53014  
Office Hours: 920-849-1400  
After Hours: 920-832-4646

Chippewa County Dept. of Human Services  
711 N. Bridge Street, Room 306  
Chippewa Falls WI 54729  
Office Hours: 715-726-7799  
After Hours: 715-726-7830

Clark County Department of Social Services  
517 Court Street, P.O. Box 190  
Neillsville WI 54456  
Office Hours: 715-743-5233  
After Hours: 715-743-3157

Columbia County Dept. of Human Services  
 711 E. Cook Street, P.O. Box 136  
 Portage WI 53901  
 Office Hours: 608-742-9227  
 After Hours: 608-742-7227

Crawford County Dept. of Human Services  
 111 W. Dunn Street  
 Prairie du Chien WI 53821  
 Office Hours: 608-326-0248  
 After Hours: 608-326-0241

Dane County Department of Human Services  
 Children, Youth & Family Intake  
 2322 S. Park Street  
 Madison WI 53713  
 Office Hours: 608-261-5437  
 After Hours: 608-255-6067

Dodge County Department of Human Services  
 County Office Building  
 143 E. Center Street  
 Juneau WI 53039-1330  
 Office Hours: 920-386-3750  
 After Hours: 920-887-6713

Door County Department of Social Services  
 421 Nebraska Street, P.O. Box 670  
 Sturgeon Bay WI 54235  
 Office Hours: 920-746-2300  
 After Hours: 920-746-2400

Douglas County Department of Human Services  
 119 N. 25<sup>th</sup> Street East  
 Superior WI 54880  
 Office Hours: 715-395-1304  
 After Hours: 715-395-1371

Dunn County Department of Human Services  
 808 Main Street, P.O. Box 470  
 Menomonie WI 54751  
 Office Hours: 715-232-1116  
 After Hours: 715-232-5987

Eau Claire County Dept. of Human Services  
 721 Oxford Ave.,  
 P.O. Box 840  
 Eau Claire WI 54702-840  
 Office Hours: 715-831-5700  
 After Hours: 715-839-4972

Florence County Dept. of Human Services  
 501 Lake Ave., P.O. Box 170  
 Florence WI 54121  
 Office Hours: 715-528-3296  
 After Hours: 715-528-3346

Fond du Lac County Dept. of Social Services  
 87 Vincent Street P.O. Box 1196  
 Fond du Lac WI 54936-1196  
 Office Hours: 920-929-3400  
 After Hours: 920-929-3391

Forest County Department of Social Services  
 Forest County Courthouse  
 200 E. Madison St.  
 Crandon WI 54520  
 Office Hours: 715-478-3351  
 After Hours: 715-478-3331

Grant County Department of Social Services  
 8820 Hwy. 35 & 61 South  
 P.O. Box 447  
 Lancaster WI 53813  
 Office Hours: 608-723-2136  
 After Hours: 608-723-2157

Green County Dept. of Human Services  
 N3152 Highway 81, Pleasant View Complex  
 Monroe WI 53566  
 Office Hours: 608-328-9399 or 608-328-9393  
 After Hours: 608-328-9393

Green Lake County Dept. of Health & Human  
 Services  
 500 Lake Steel Street  
 Green Lake WI 54941  
 Office Hours: 920-294-4070  
 After Hours: 920-294-4000

Iowa County Dept. of Social Services  
 109 W. Fountain St.  
 Dodgeville WI 53533  
 Office Hours: 608-935-9311  
 After Hours: 608-935-3314

Iron County Human Services  
 Courthouse  
 300 Taconite Street  
 Hurley WI 54534  
 Office Hours: 715-561-3636 or 715-561-3637 or  
 715-561-4168  
 After Hours: 715-561-3800

Jackson County Dept. of Health and Human  
 Services  
 420 Highway 54 West  
 P.O. Box 457  
 Black River Falls WI 54615  
 Office Hours: 715-284-4301  
 After Hours: 715-284-5357

Jefferson County Human Services Department  
 N3995 Annex Road  
 Jefferson WI 53549  
 Office/After Hours: 920-674-3105

Juneau County Department of Human Services  
 Courthouse Annex  
 220 E. LaCrosse St.  
 Mauston WI 53948  
 Office Hours: 608-847-2400  
 After Hours: 608-847-6161

Kenosha County Human Services Department  
 714 52nd Street  
 Kenosha WI 53140  
 Office Hours: 262-605-6582  
 After Hours: 262-657-7188

Kewaunee County Dept. of Human Services  
 510 Kilbourn Street  
 Kewaunee WI 54216  
 Office Hours: 920-388-3777  
 After Hours: 920-388-3100

LaCrosse County Human Services Department  
 300 North 4th Street, P.O. Box 4002  
 LaCrosse WI 54602  
 Office Hours: 608-785-6050 or 785-6054  
 After Hours: 608-785-9634

Lafayette County Dept. of Human Services  
 627 Main Street  
 Darlington WI 53530  
 Office Hours: 608-776-4800  
 After Hours: 608-776-4848

Langlade County Department of Social Services  
 Langlade County Health Service Center  
 1225 Langlade Road  
 Antigo WI 54409  
 Office Hours: 715-627-6500  
 After Hours: 715-623-4111

Lincoln County Department of Social Services  
 607 N. Sales St.  
 P.O. Box 547  
 Merrill WI 54452  
 Office Hours: 715-536-6200  
 After Hours: 715-536-6272

Manitowoc County Human Services Department  
 926 South 8th Street  
 P.O. Box 1177  
 Manitowoc WI 54220  
 Office Hours: 920-683-4230  
 After Hours: 920-323-2448

Marathon County Department of Social Services  
 400 E. Thomas Street  
 Wausau WI 54403  
 Office Hours: 715-261-7500  
 After Hours: 715-261-1200

Marinette County Dept. of Health & Human  
 Services  
 2500 Hall Avenue, Suite B  
 Marinette WI 54143  
 Office Hours: 715-732-7700  
 After Hours: 715-732-7600

Marquette County Dept. of Human Services  
 77 Park Street  
 P.O. Box 405, Courthouse  
 Montello WI 53949  
 Office Hours: 608-297-9135  
 After Hours: 608-297-2115

Menominee County Dept. of Human Services  
 Social Services Building, Hwy 47  
 P.O. Box 280  
 Keshena WI 54135  
 Office Hours: 715-799-3861 or 715-799-5353  
 After Hours: 715-799-3861

Milwaukee Bureau of Child Welfare  
 235 W. Galena Street  
 Milwaukee WI 53212  
 Office Hours: 414-220-SAFE (7233)  
 After Hours: 414-220-SAFE (7233)

Monroe County Dept. of Human Services  
 Community Services Center A-19  
 14301 County Highway B  
 Sparta WI 54656  
 Office Hours: 608-269-8630  
 After Hours: 911

Oconto County Department of Human Services  
 501 Park Ave.  
 Oconto WI 54153-1612  
 Office Hours: 920-834-7000  
 After Hours: 920-834-6900

Oneida County Department of Social Services  
 P.O. Box 400-Courthouse  
 Rhinelander WI 54501  
 Office Hours: 715-362-5695  
 After Hours: 715-361-5100

Outagamie County Dept. of Health and Human  
 Services  
 401 South Elm Street  
 Appleton, WI 54911  
 Office Hours: 920-832-5161  
 After Hours: 920-832-4646

Ozaukee County Department of Social Services  
 121 W. Main Street  
 P.O. Box 994  
 Port Washington WI 53074-0994  
 Office Hours: 262-284-8200  
 After Hours: 262-238-8436

Pepin County Department of Human Services  
 740 7th Ave. West  
 Durand WI 54736  
 Office Hours: 715-672-8941  
 After Hours: 715-672-5944

Pierce County Department of Human Services  
 412 W. Kinne St.  
 P.O. Box 670  
 Ellsworth WI 54011  
 Office Hours: 715-273-6766  
 After Hours: 715-273-5051

Polk County Department of Human Services  
 300 Polk County Plaza Suite 110  
 Balsam Lake WI 54810-0219  
 Office Hours: 715-485-8400  
 After Hours: 715-485-8300

Portage County Department of Health & Human  
 Services  
 817 Whiting Avenue  
 Stevens Point WI 54481  
 Office Hours: 715-345-5350  
 After Hours: 715-345-5350

Price County Department of Human Services  
 Courthouse  
 104 South Eyder Avenue  
 P.O. Box 88  
 Phillips WI 54555  
 Office Hours: 715-339-2158  
 After Hours: 715-339-3011

Racine County Human Services Department  
 1717 Taylor  
 Racine WI 53403  
 Office Hours/After Hours: 262-638-6321

Richland County Department of Social Services  
 221 West Seminary  
 Richland Center WI 53581  
 Office Hours: 608-647-8821  
 After Hours: 608-647-2106

Rock County Human Services Department  
 3530 N. County Trunk F  
 P.O. Box 1649  
 Janesville WI 53547-1649  
 Office Hours: 608-757-5401  
 After Hours: 608-757-2244

Rusk County Department of Health & Human  
 Services  
 Courthouse  
 311 East Miner Suite C-240  
 Ladysmith WI 54848  
 Office Hours: 715-532-2299  
 After Hours: 715-532-2299

Sauk County Department of Human Services  
 505 Broadway, 4<sup>th</sup> Floor  
 P.O. Box 29  
 Baraboo WI 53913  
 Office Hours: 608-355-4200  
 After Hours: 1-800-533-5692

Sawyer County Department of Health & Human  
 Services  
 105 E. 4th Street, P.O. Box 730  
 Hayward WI 54843  
 Office Hours: 715-634-4806  
 After Hours: 715-634-4858

Shawano County Department of Social Services  
 Courthouse  
 P.O. Box 434  
 Shawano WI 54166  
 Office Hours: 715-526-4700  
 After Hours: 715-526-3100

Sheboygan County Health & Human Services  
Department

1011 North 8th Street  
Sheboygan WI 53081  
Office Hours: 920-459-6418  
After Hours: 414-459-3111

St. Croix County Dept. of Health & Human  
Services

1445 North 4th Street  
New Richmond WI 54017  
Office Hours: 715-246-6991  
After Hours: 715-246-6991

Taylor County Human Services Department

340 East College Street  
Medford WI 54451  
Office Hours: 715-748-3332  
After Hours: 715-748-2200

Trempealeau County Dept. of Social Services

Courthouse, P.O. Box 67  
Whitehall WI 54773  
Office Hours: 715-538-2311 ext. 290  
After Hours: 715-538-4351

Vernon County Department of Human Services

E 7419 County Home Road, P.O. Box 823  
Viroqua WI 54665  
Office Hours: 608-637-5210  
After Hours: 608-637-2124

Vilas County Department of Social Services

330 Court Street  
Eagle River WI 54521  
Office Hours: 715-479-3668  
After Hours: 715-479-4441

Walworth County Dept. of Health & Human  
Services

W3955 Hwy NN, Box 1006  
Elkhorn WI 53121  
Office Hours: 262-741-3200/1-800-365-1587  
After Hours: 262-741-3200/1-800-365-1587

Washburn County Human Services Department

P.O. Box 250  
Shell Lake WI 54871  
Office Hours: 715-468-4747  
After Hours: 715-468-2721

Washington County Dept. of Social Services

333 E. Washington St.  
Suite 3100  
West Bend WI 53095  
Office Hours: 262-335-4610  
After Hours: 262-335-4670

Waukesha County Dept. of Health & Human  
Services

500 Riverview Ave.  
Waukesha WI 53188  
Office Hours: 262--548-7212/548-7666  
After Hours: 262-547-7731

Waupaca County Department of Health & Human  
Services

811 Harding Street  
Waupaca WI 54981-2087  
Office Hours: 715-258-6300  
After Hours: 715-258-4466

Waushara County Department of Social Services

230 West Park Street, P.O. Box 898  
Wautoma WI 54982  
Office Hours: 920-787-3303  
After Hours: 920-787-3321

Winnebago County Dept. of Social Services  
220 Washington Avenue  
P.O. Box 2646  
Oshkosh WI 54903-2646  
Office Hours: 920-236-4600  
After Hours: 920-233-7707

Wood County Department of Social Services  
(South Wood County Office)  
Courthouse, 400 Market Street  
P.O. Box 8095  
Wisconsin Rapids WI 54495-8095  
Office Hours: 715-421-8600  
After Hours: 715-421-8600

## APPENDIX C

### RELEVANT WISCONSIN STATUTES

Following are excerpts from the Wisconsin Statutes that create the basis for persons to report suspected child maltreatment and for child protective services agencies to respond. The excerpts are from the 1997-98 Wisconsin Statutes and Annotations, updated through 1999 Wisconsin Act 108. (Note: The excerpts appear exactly as they would appear in the published statutes. Therefore, other portions of the statutes not relevant to child maltreatment are included on some pages.)

Included in the excerpts are sections from Chapter 48, known as the Children's Code and sections from criminal statutes that are cross-referenced in the Children's Code in order to define child abuse.

Specifically, the following statutory sections are included:

- **s.48.01 Title and legislative purpose.**
- **s.48.02 Definitions.** This includes definitions of child abuse.
- **s.48.13 Jurisdiction over children alleged to be in need of protection or services.** This describes the basis on which the local child protective services agencies (county social/human services departments and the Bureau of Milwaukee Child Welfare) may petition court to intervene in a family.
- **s.48.981 Abused or neglected children and abused unborn children.** This section defines child neglect, describes the reporting requirements of alleged child maltreatment and describes the child protective services agencies' duties and responsibilities.
- **s.939.22 Words and phrases defined.** This section defines terms that are used in describing certain crimes, some of which are cross-referenced in s.48.02 in order to define child abuse.
- **s.940.225 Sexual assault.** This defines the crime of sexual assault and is cross-referenced under s.48.02
- **s.944.30 Prostitution.** This defines the crime of prostitution and is cross-referenced under s.48.02
- **s.948.02 Sexual assault of a child.** This is the first in a series of crimes from Chapter 948, known as Crimes Against Children, that are cross-referenced under s.48.02 in order to define child sexual abuse. The following sections are also cross-referenced under s. 48.02.
- **s.948.025 Engaging in repeated acts of sexual assault of the same child.**
- **s.948.05 Sexual exploitation of a child.**
- **s.948.055 Causing a child to view or listen to sexual activity.**
- **s.948.07 Child enticement.**
- **s.948.10 Exposing genitals or pubic area.**

48.01 CHILDREN'S CODE

- 48.615 Child welfare agency licensing fees.  
SUBCHAPTER XIV  
FOSTER HOMES AND TREATMENT FOSTER HOMES
- 48.62 Licensing of foster homes and treatment foster homes; rates.
- 48.625 Licensing of group homes; fees.
- 48.627 Foster, treatment foster and family-operated group home parent insurance and liability.
- 48.63 Restrictions on placements.
- 48.64 Placement of children in foster homes, treatment foster homes and group homes.  
SUBCHAPTER XV  
DAY CARE PROVIDERS
- 48.65 Day care centers licensed; fees.
- 48.651 Certification of day care providers.
- 48.653 Information for day care providers.
- 48.655 Parental access.
- 48.656 Parent's right to know.
- 48.657 Day care center reports.  
SUBCHAPTER XVI  
LICENSING PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES, TREATMENT FOSTER HOMES, GROUP HOMES, DAY CARE CENTERS AND COUNTY DEPARTMENTS
- 48.66 Licensing duties of the department.
- 48.67 Rules governing child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities and county departments.
- 48.675 Foster care education program.
- 48.68 Investigation of applicant; issuing of license.
- 48.685 Criminal history and child abuse record search.
- 48.69 Probationary licenses.
- 48.70 Provisions of licenses.
- 48.715 Sanctions and penalties.
- 48.72 Appeal procedure.
- 48.73 Inspection of licensees.
- 48.735 Immunization requirements; day care centers.
- 48.737 Lead screening, inspection and reduction requirements; day care centers.
- 48.74 Authority of department to investigate alleged violations.
- 48.745 Formal complaints regarding child welfare agencies and group homes.
- 48.75 Foster homes and treatment foster homes licensed by public licensing agencies and by child welfare agencies.
- 48.76 Penalties.
- 48.77 Injunction against violations.  
SUBCHAPTER XVII  
GENERAL PROVISIONS ON RECORDS
- 48.78 Confidentiality of records.  
SUBCHAPTER XVIII  
COMMUNITY SERVICES
- 48.79 Powers of the department.

- 48.80 Municipalities may sponsor activities.  
SUBCHAPTER XIX  
ADOPTION OF MINORS; GUARDIANSHIP
- 48.81 Who may be adopted.
- 48.82 Who may adopt.
- 48.825 Advertising related to adoption.
- 48.83 Jurisdiction and venue.
- 48.831 Appointment of guardian for child without a living parent for adoptability finding.
- 48.832 Transfer of guardianship upon revocation of guardian's license or contract.
- 48.833 Placement of children for adoption by the department, county departments and child welfare agencies.
- 48.835 Placement of children with relatives for adoption.
- 48.837 Placement of children with nonrelatives for adoption.
- 48.838 Foreign adoption fees.
- 48.839 Adoption of foreign children.
- 48.841 Persons required to file recommendation as to adoption.
- 48.85 Recommendation of guardian.
- 48.871 Filing of recommendation by guardian.
- 48.88 Notice of hearing; investigation.
- 48.89 Recommendation of the department.
- 48.90 Filing of adoption petition; preadoption residence.
- 48.91 Hearing; order.
- 48.913 Payments by adoptive or proposed adoptive parents to a birth parent or child or on behalf of a birth parent or child.
- 48.915 Adoption appeals given preference.
- 48.92 Effect of adoption.
- 48.925 Visitation rights of certain persons.
- 48.93 Records closed.
- 48.94 New birth certificate.
- 48.95 Withdrawal or denial of petition.
- 48.96 Subsequent adoption.
- 48.97 Adoption orders of other jurisdictions.
- 48.975 Adoption assistance.
- 48.977 Appointment of relatives as guardians for certain children in need of protection or services.
- 48.978 Appointment or designation of standby guardian of a child.  
SUBCHAPTER XX  
MISCELLANEOUS PROVISIONS
- 48.98 Interstate placement of children.
- 48.981 Abused or neglected children and abused unborn children.
- 48.982 Child abuse and neglect prevention board.
- 48.985 Expenditure of federal child welfare funds.
- 48.987 Earnings of self-supporting minors.
- 48.988 Interstate compact on the placement of children.
- 48.989 Interstate compact on the placement of children: additional procedure.
- 48.985 Interstate adoption agreements.

**Cross-reference:** See s. 46.011 for definitions applicable to chs. 46, 48, 51, 55 and 58.

**NOTE:** 1995 Wis. Act 275, which made major revisions of Chapter 48, contains extensive explanatory notes.

SUBCHAPTER I

GENERAL PROVISIONS

**48.01 Title and legislative purpose. (1)** This chapter may be cited as "The Children's Code". In construing this chapter, the best interests of the child or unborn child shall always be of paramount consideration. This chapter shall be liberally construed to effectuate the following express legislative purposes:

(a) While recognizing that the paramount goal of this chapter is to protect children and unborn children, to preserve the unity of the family, whenever appropriate, by strengthening family life through assisting parents and the expectant mothers of unborn children, whenever appropriate, in fulfilling their responsibilities as parents or expectant mothers. The courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, should assist parents and the expectant mothers of unborn children in changing any circumstances in the home which might harm the child or unborn child, which may require the child to be placed outside the home or which may require the expectant mother to be taken into custody. The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family. The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships

are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their safe return to the family.

(ad) To provide judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting the public safety.

(ag) To recognize that children have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family. It is further recognized that, under certain circumstances, in order to ensure that the needs of a child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the child for the child to be removed from his or her parents, consistent with any applicable law relating to the rights of parents.

(am) To recognize that unborn children have certain basic needs which must be provided for, including the need to develop physically to their potential and the need to be free from physical harm due to the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. It is further recognized that, when an expectant mother of an unborn child suffers from a habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, in order to ensure that the needs

of the unborn child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the unborn child for the expectant mother to be ordered to receive treatment, including inpatient treatment, for that habitual lack of self-control, consistent with any applicable law relating to the rights of the expectant mother.

(ap) To recognize the compelling need to reduce the harmful financial, societal and emotional impacts that arise and the tremendous burdens that are placed on families and the community and on the health care, social services, educational and criminal justice systems as a result of the habitual lack of self-control of expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, during all stages of pregnancy.

(bg) 1. To ensure that children are protected against the harmful effects resulting from the absence of parents or parent substitutes, from the inability, other than financial inability, of parents or parent substitutes to provide care and protection for their children and from the destructive behavior of parents or parent substitutes in providing care and protection for their children.

2. To ensure that children are provided good substitute parental care in the event of the absence, temporary or permanent inability, other than financial inability, or unfitness of parents to provide care and protection for their children.

(bm) To ensure that unborn children are protected against the harmful effects resulting from the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. To effectuate this purpose and the purpose specified in par. (am), it is the intent of the legislature that the provisions of this chapter that protect unborn children against those harmful effects and that provide for the needs of unborn children, as described in par. (am), shall be construed to apply throughout an expectant mother's pregnancy to the extent that application of those provisions throughout an expectant mother's pregnancy is constitutionally permissible and that expectant mothers who habitually lack self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, be encouraged to seek treatment for that habitual lack of self-control voluntarily when voluntary treatment would be practicable and effective.

(br) To encourage innovative and effective prevention, intervention and treatment approaches, including collaborative community efforts and the use of community-based programs, as significant strategies in planning and implementing legislative, executive and local government policies and programs relating to children and their families and substitute families and to unborn children and their expectant mothers.

(dm) To divert children and unborn children from formal proceedings under this chapter to the extent that this is consistent with protection of children, unborn children and the public safety.

(f) To assure that children pending adoptive homes will be placed in the best homes available and protected from adoption by persons unfit to have responsibility for raising children.

(gg) To promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanence of foster or treatment foster care.

(gr) To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued in accordance with this chapter and termination of parental rights is in the best interest of the child.

(gt) To reaffirm that the duty of a parent to support and maintain his or her child continues during any period in which the child may be removed from the custody of the parent.

(2) In proceedings involving an American Indian child, the best interests of the child shall be determined consistent with the Indian child welfare act, 25 USC 1901 to 1963. In this subsection, "American Indian child" means any unmarried person who is under 18 years of age and who is one of the following:

(a) A member of an Indian tribe, as defined in 25 USC 1903 (8).

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

**History:** 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446; 1995 a. 77, 275; 1997 a. 237, 292; 1999 a. 32.

The meaning of the "best interests of the child" is discussed. Adoption of Tachick, 60 Wis. 2d 540, 210 N.W.2d 865.

The best interests of a child abandoned by its father prior to its birth require affirmation of the county court order terminating the father's parental rights. State ex rel. Lewis v. Lutheran Social Services, 68 Wis. 2d 36, 227 N.W.2d 643.

The "paramount consideration" of the child's best interest does not mandate that the child's interests will always outweigh the public's. In Interest of B.B., 166 Wis. 2d 202, 479 N.W.2d 205 (Ct. App. 1991).

Jurisdictional questions relating to Indian child welfare act discussed. 70 Atty. Gen. 237.

Adoption and termination proceedings in Wisconsin: Straining the wisdom of Solomon. Hayes and Morse, 66 MLR 439 (1983).

The Indian child welfare act—tribal self-determination through participation in child custody proceedings. 1979 WLR 1202.

**48.02 Definitions.** In this chapter, unless otherwise defined:

(1) "Abuse", other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

(1d) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(1e) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(1m) "Alcoholism" has the meaning given in s. 51.01 (1m).

(1s) "Approved treatment facility" has the meaning given in s. 51.01 (2).

(2) "Child" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age.

(2c) "Child caring institution" means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(2d) "Controlled substance" has the meaning given in s. 961.01 (4).

(2e) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2g) "County department" means a county department under s. 46.22 or 46.23, unless the context requires otherwise.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 938.

(3) "Court intake worker" means any person designated to provide intake services under s. 48.067.

(4) "Department" means the department of health and family services.

(5) "Developmentally disabled" means having a developmental disability, as defined in s. 51.01 (5).

(5g) "Drug dependent" has the meaning given in s. 51.01 (8).

(5j) "Emotional damage" means harm to a child's psychological or intellectual functioning. "Emotional damage" shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(5m) "Foreign jurisdiction" means a jurisdiction outside of the United States.

(6) "Foster home" means any facility that is operated by a person required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for no more than 4 children or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(7) "Group home" means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children.

(8) "Guardian" means the person named by the court having the duty and authority of guardianship.

(9s) "Integrated service plan" has the meaning given in s. 46.56 (1) (g).

(10) "Judge", if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 938.

(11) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12m) "Nonidentifying social history information" means information about a person's birth parent that may aid the person in establishing a sense of identity. "Nonidentifying social history information" may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

- (a) Age at the time of the person's birth.
- (b) Nationality.
- (c) Race.
- (d) Education.
- (e) General physical appearance.
- (f) Talents, hobbies and special interests.
- (h) Reason for placing the child for adoption or for the termination of parental rights.
- (i) Religion.
- (k) Family history.
- (m) Personality traits of each parent.

(13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s.

891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, "parent" includes a person acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

(14) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(14g) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22 (14).

(15) "Relative" means a parent, grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle or aunt. This relationship shall be by blood, marriage or adoption.

(16) "Secure detention facility" means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66 (1) (a).

(17m) "Special treatment or care" means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child. "Special treatment or care" also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self-control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(17q) "Treatment foster home" means any facility that is operated by a person required to be licensed under s. 48.62 (1) (b), that is operated under the supervision of the department, a county department or a licensed child welfare agency, and that provides to no more than 4 children care, maintenance and structured, professional treatment by trained individuals, including the treatment foster parents.

(18) "Trial" means a fact-finding hearing to determine jurisdiction.

(19) "Unborn child" means a human being from the time of fertilization to the time of birth.

**History:** 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9.

**Cross-reference:** See s. 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

Under sub. (13), a deceased parent continues to be parent; a deceased parent's parents continue to be grandparents. Grandparental Visitation of C.G.F., 168 Wis. 2d 62, N.W.2d 803 (1992).

A viable fetus is not a "person" within the definition of a child under sub. (2). State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

Due process and equal protection; classifications based on illegitimacy. Bazos, 1973 WLR 908.

**48.023 Guardianship.** Except as limited by an order of the court under s. 48.977 (5) (b) or 48.978 (6) (b) 2., a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

(1) The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric and surgical treatment, and obtaining a motor vehicle operator's license.

(2) The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning

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control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

**History:** 1975 c. 302, 421; 1977 c. 354; 1979 c. 300; 1985 a. 320; 1991 a. 39, 316; 1995 a. 27, 77; 1997 a. 292.

A judge may order the department to provide information on foster care placements in a county. In Interest of J. A. 138 Wis. 2d 483, 406 N.W.2d 372 (1987).

**48.09 Representation of the interests of the public.** The interests of the public shall be represented in proceedings under this chapter as follows:

(5) By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133 or 48.977. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd-numbered year and the board notifies the department of administration of that change by January 1 of that odd-numbered year.

(6) By any appropriate person designated by the county board of supervisors in any matter arising under s. 48.14.

**History:** 1977 c. 354; 1985 a. 176; 1989 a. 336; 1993 a. 246; 1995 a. 77, 275; 1997 a. 292.

**48.10 Power of the judge to act as intake worker.** The duties of the intake worker may be carried out from time to time by the judge at his or her discretion, but if a request to file a petition is made or an informal disposition is entered into, the judge shall be disqualified from participating further in the proceedings.

**History:** 1977 c. 354; 1979 c. 331, 359; 1995 a. 77; 1997 a. 80.

**48.11 Advisory board.** (1) The court may appoint a board of not more than 15 citizens of the county, known for their interest in the welfare of children, who shall serve without compensation, to be called the advisory board of the court. The members of the board shall hold office during the pleasure of the court. The duties of the board are:

(a) To advise and cooperate with the court upon all matters affecting the workings of this law and other laws relating to children, their care and protection.

(b) To familiarize themselves with the functions and facilities of the court under this law and to interpret to the public the work of the court.

(2) Nothing in this section shall be construed to require the court to open court records or to disclose their contents.

**History:** 1977 c. 449.

SUBCHAPTER III

JURISDICTION

**48.13 Jurisdiction over children alleged to be in need of protection or services.** The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(1) Who is without a parent or guardian;

(2) Who has been abandoned;

(3) Who has been the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;

(3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;

(5) Who has been placed for care or adoption in violation of law;

(8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

**History:** 1977 c. 29, 354; 1979 c. 298, 300, 334; 1985 a. 321; 1987 a. 285, 339, 403; 1993 a. 27, 363, 395, 474; 1995 a. 77, 275; 1997 a. 80.

**NOTE:** 1993 Wis. Act 395, which created subs. (3m) and (10m), contains extensive explanatory notes.

CHIPS proceedings are controlled by the Code of Civil Procedure unless ch. 48 requires a different procedure; summary judgment under s. 802.08 is available in CHIPS cases. In Interest of F.Q. 162 Wis. 2d 607, 470 N.W.2d 1 (Ct. App. 1991).

A jury verdict that children are in need of protection or services requires a separate verdict question for each of the specific jurisdictional grounds alleged. Interest of Luran F. 194 Wis. 2d 283, 533 N.W.2d 812 (1995).

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court does not have jurisdiction over a fetus under this section. State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

**48.133 Jurisdiction over unborn children in need of protection or services and the expectant mothers of those unborn children.** The court has exclusive original jurisdiction over an unborn child alleged to be in need of protection or services which can be ordered by the court whose expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control. The court also has exclusive original jurisdiction over the expectant mother of an unborn child described in this section.

**History:** 1997 a. 292.

**48.135 Referral of children and expectant mothers of unborn children to proceedings under chapter 51 or 55.**

(1) If a child alleged to be in need of protection or services or a child expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the child or child expectant mother is developmentally disabled, mentally ill or drug dependent or suffers from alcoholism, the court may proceed under ch. 51 or 55. If an adult expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the adult expectant mother is drug dependent or suffers from alcoholism, the court may proceed under ch. 51.

brought into this state from a foreign jurisdiction for the purpose of adoption.

(5) The department may promulgate all rules necessary for the enforcement of this section.

**History:** 1977 c. 354; 1979 c. 32 s. 92 (1); 1981 c. 81; 1985 a. 176; 1985 a. 332 s. 251 (5); 1993 a. 446.

**48.981 Abused or neglected children and abused unborn children. (1) DEFINITIONS.** In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(am) "Caregiver" means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, stepparent, brother, sister, stepbrother, stepsister, half brother or half sister.
2. The child's guardian.
3. The child's legal custodian.
4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.
5. An employe of a residential facility or child caring institution in which the child was or is placed.
6. A person who provides or has provided care for the child in or outside of the child's home.
7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.
8. Any relative of the child other than a relative specified in subd. 1.

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

(cs) "Indian child" means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and the biological child of a member of the tribe or band.

(d) "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or den-

tal care or shelter so as to seriously endanger the physical health of the child.

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) "Relative" means a parent, grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle or steppaunt.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) "Subject" means a person or unborn child named in a report or record as any of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn child.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

(2) PERSONS REQUIRED TO REPORT. A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d), school teacher, administrator or counselor, mediator under s. 767.11, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, dietitian, speech-language pathologist, audiologist, emergency medical technician, first responder or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3). Any other person, including an attorney, having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may make such a report. Any person, including an attorney having reason to suspect that an unborn child has been abused or reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3). No person making a report under this subsection may be discharged from employment for so doing.

**NOTE:** Sub. (2) is shown as amended eff. 11-1-00 by 1999 Wis. Act 56. Prior to 11-1-00 it reads:

(2) PERSONS REQUIRED TO REPORT. A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d), school teacher, administrator or counselor, mediator under s. 767.11, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42 or 51.437, physical therapist, occupational therapist, dietitian, speech-language pathologist, audiologist, emergency medical technician or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3). Any other person, including an attorney, having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may make such a report. Any person, including an attor-

ney having reason to suspect that an unborn child has been abused or reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3). No person making a report under this subsection may be discharged from employment for so doing.

**(2m) EXCEPTION TO REPORTING REQUIREMENT.** (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, as defined in s. 253.07 (1) (b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

**(3) REPORTS; INVESTIGATION.** (a) *Referral of report.* A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all cases reported to it. The county department, department or licensed child welfare agency may require that a subsequent report be made in writing. Each county department, the department and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

(b) *Duties of local law enforcement agencies.* 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to

suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the police or other law enforcement officials determine that criminal action is necessary, they shall refer the case to the district attorney for criminal prosecution.

(bm) *Notice of report to Indian tribal agent.* In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a county department which receives a report under par. (a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child or unborn child is in need of protection or services. The investigation shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report that does not disclose who is suspected of the child abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the agency involved to the child's parents, guardian or legal custodian. The agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need

of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. a. If the person making the investigation is an employe of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employe of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employe of the county department shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

2m. a. If the person making the investigation is an employe of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employe of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employe of the county department shall take the expectant mother of the unborn child into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare

agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any expectant mother of an unborn child. The agency shall update the record every 6 months until the case is closed.

6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7) (e) and the penalties for failing to do so under sub. (7) (f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department. The department shall use non-identifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) *Contract with licensed child welfare agencies.* A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2. b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2. a., 3., 4., 5., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

(d) *Independent investigation.* 1. In this paragraph, "agent" includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employe of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate the child welfare agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(4) **IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unborn child.

(5) **CORONER'S REPORT.** Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) **PENALTY.** Whoever intentionally violates this section by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(7) **CONFIDENTIALITY.** (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by an agency and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. A professional employe of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings

under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd. 10.

11m. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer appointed or person employed by a court-appointed special advocate program recognized by the county board or the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the advocacy services in proceedings related to a petition under s. 48.13 or 48.133 for which the court-appointed special advocate program is recognized by the county board, county department or department.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88 (2) (c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other

state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) An agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(d) The department may have access to any report or record maintained by an agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department, the county departments and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, a licensed child welfare agency under contract with the department or a county department, and the tribal social services departments, persons and officials required to report, the general public and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation and coordination in the identification, prevention and treatment of child abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments and licensed child welfare agencies under contract with county departments or, in a county having a population of 500,000 or more, the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department, the county departments and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or

private organization which meets the standards set by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and agency staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06 (1) (am) 3. and (2) (c).

(9) ANNUAL REPORTS. Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172 (2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each agency described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

**History:** Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84.

Even if the authority for a warrantless search can be inferred from ch. 48, those provisions cannot supercede the constitutional provisions prohibiting unreasonable searches and seizures. State v. Boggess, 115 Wis. 2d 443, 340 N.W.2d 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. State v. Hurd, 135 Wis. 2d 266, 400 N.W.2d 42 (Ct. App. 1986).

Immunity under sub. (4) extends to reporters who report the necessary information to another who they expect to and who does report to proper authorities. Investigating the allegation prior to reporting does not run afoul of the immediate reporting requirement of sub. (3) and does not affect immunity. Allegations of negligence by reporters are not sufficient to challenge the good faith requirement of sub. (4). Phillips v. Behnke, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995).

To overcome the presumption of good faith under sub. (4), more than a violation of sub. (3) is required. It must also be shown that the violation was "conscious" or "intentional". Drake v. Huber, 218 Wis. 2d 672, 582 N.W.2d 74 (Ct. App. 1998).

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent terms in s. 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professionals may report suspected child abuse under the permissive provisions of sub. (2) when the abuser, rather than victim, is seen in the course of professional duties. Section 51.30 does not bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section is discussed. 76 Atty. Gen. 286. Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Atty. Gen. 84.

The responsibility of county departments of social services to investigate allegations of child abuse and neglect is discussed. Department staff members may interview a child on public school property, and may exclude school personnel from the interview. School personnel cannot condition on-site interviews on notification of the child's parents. 79 Atty. Gen. 48.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. 81 Atty. Gen. 66.

County departments have authority to transport a child to a county-recognized child advocacy center for the purpose of an investigatory interview without consent of the primary caretaker, if to do so is necessary to an investigation of alleged child maltreatment. OAG 3-98.

The confrontation clause does not require a defendant's access to confidential child abuse reports; due process requires that the court undertake an in camera inspection of the file to determine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S. 39 (1987).

This section does not authorize a private cause of action for failure to report. Isley v. Capucian Province, 880 F. Supp. 1138 (1995).

#### 48.982 Child abuse and neglect prevention board.

(1) DEFINITIONS. In this section:

(b) "Board" means the child abuse and neglect prevention board created under s. 15.195 (4).

(bm) "Cultural competency" means the ability of an individual or organization to understand and act respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes and behaviors of persons and families of various cultures, including persons and families of various cultures who participate in services from the individual or organization and persons of various cultures who provide services for the individual or organization.

(c) "Neglect" has the meaning given in s. 48.981 (1) (d).

(d) "Organization" means a nonprofit organization, as defined under s. 108.02 (19), or a public agency which provides or proposes to provide child abuse and neglect prevention and intervention services or parent education.

(2) POWERS AND DUTIES. The board shall:

(a) Biennially, develop and transmit to the governor and the presiding officer of each house of the legislature a plan for awarding grants to organizations. The plan shall assure that there is an equal opportunity for establishment of child abuse and neglect prevention programs, early childhood family education centers and right from the start projects. The plan shall also ensure that the grants will be distributed throughout all geographic areas of the state and in both urban and rural communities. For grants provided under sub. (6), the plan shall also ensure that the grants are distributed based on population.

(b) Develop and publicize criteria for grant applications.

(c) Review and approve or disapprove grant applications and monitor the services provided under each grant awarded under subs. (4), (6) and (7).

(d) Solicit and accept contributions, grants, gifts and bequests for the children's trust fund or for any other purpose for which a contribution, grant, gift or bequest is made and received. Moneys received under this paragraph, other than moneys received under s. 341.14 (6r) (b) 6., may be credited to the appropriation accounts under s. 20.433 (1) (i), (q) or (r). Interest earned on moneys received under s. 341.14 (6r) (b) 6. may be credited to the appropriation accounts under s. 20.433 (1) (q) or (r).

(e) Include as part of its annual report under s. 15.07 (6) the names and locations of organizations receiving grants, the amounts provided as grants, the services provided by grantees and the number of persons served by each grantee.

(f) Establish a procedure for an annual evaluation of its functions, responsibilities and performance. In a year in which the biennial plan under par. (a) is prepared, the evaluation shall be coordinated with the plan.

(g) In coordination with the departments of health and family services and public instruction:

1. Recommend to the governor, the legislature and state agencies changes needed in state programs, statutes, policies, budgets and rules to reduce the problems of child abuse and neglect, improve coordination among state agencies that provide prevention services and improve the condition of children and persons responsible for children who are in need of prevention program services.

2. Promote statewide educational and public informational seminars for the purpose of developing public awareness of the problems of child abuse and neglect.

3. Encourage professional persons and groups to recognize and deal with problems of child abuse and neglect.

4. Disseminate information about the problems of child abuse and neglect to the public and to organizations concerned with those problems.

5. Encourage the development of community child abuse and neglect prevention programs.

939.05 CRIMES—GENERALLY

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This paragraph does not apply to a person who voluntarily changes his or her mind and no longer desires that the crime be committed and notifies the other parties concerned of his or her withdrawal within a reasonable time before the commission of the crime so as to allow the others also to withdraw.

**History:** 1993 a. 486.

It is desirable but not mandatory that an information refer to this section where the district attorney knows in advance that a conviction can only be based on participation and the court can instruct and the defendant can be convicted on the basis of the section in the absence of a showing of adverse effect on the defendant. *Bethards v. State*, 45 Wis. 2d 606, 173 N.W.2d 634.

It is not error that an information charging a crime does not also charge the defendant with being a party to a crime. *Nicholas v. State*, 49 Wis. 2d 683, 183 N.W.2d 11.

Under sub. (2) (c) a conspirator is one who is concerned with a crime prior to its actual commission. *State v. Haugen*, 52 Wis. 2d 791, 191 N.W.2d 12.

A complaint charging the defendant as a party to the crime of theft that alleged that an unidentified man stole property and gave it to the defendant who passed it on was insufficient. There must be an allegation that the defendant knew of the commission of the crime. *State v. Haugen*, 52 Wis. 2d 791, 191 N.W.2d 12.

An information charging the defendant with being a party to a crime need not set forth the particular subsection relied upon. A defendant can be convicted of 1st degree murder under this statute even though he claims that he only intended to rob and an accomplice did the shooting. *State v. Cydzik*, 60 Wis. 2d 683, 211 N.W.2d 421.

The state need not elect as to which of the elements of the charge it is relying on. *Hardison v. State*, 61 Wis. 2d 262, 212 N.W.2d 103.

Evidence establishing that the defendant's car was used in a robbery getaway was sufficient to convict the defendant of armed robbery, party to a crime, where the defendant admitted sole possession of the car on the night of the robbery. *Taylor v. State*, 74 Wis. 2d 255, 246 N.W.2d 518.

Conduct undertaken to intentionally aid another in the commission of a crime and which yields such assistance constitutes aiding and abetting the crime and whatever it entails as a natural consequence. *State v. Asfoor*, 75 Wis. 2d 411, 249 N.W.2d 529.

Defendants may be found guilty under sub. (2) if, between them, they perform all of the necessary elements of the crime with awareness of what the others are doing; each defendant need not be present at the scene of the crime. *Roehl v. State*, 77 Wis. 2d 398, 253 N.W.2d 210.

Aiding-and-abetting and conspiracy theories are discussed. *State v. Charbarneau*, 82 Wis. 2d 644, 264 N.W.2d 227.

Withdrawal under sub. (2) (c) must be timely. *Zelenka v. State*, 83 Wis. 2d 601, 266 N.W.2d 279 (1978).

This section applies to all crimes except where legislative intent clearly indicates otherwise. *State v. Tronca*, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

Proof of a "stake in the venture" is not needed to convict under sub. (2) (b). *Krueger v. State*, 84 Wis. 2d 272, 267 N.W.2d 602 (1978).

Multiple conspiracies are discussed. *Bergeron v. State*, 85 Wis. 2d 595, 271 N.W.2d 386 (1978).

A jury need not unanimously agree whether defendant: (1) directly committed the crime, (2) aided and abetted its commission, or (3) conspired with another to commit it. *Holland v. State*, 91 Wis. 2d 134, 280 N.W.2d 288 (1979).

An aider and abettor who withdraws from a conspiracy does not remove himself or herself from aiding and abetting. *May v. State*, 97 Wis. 2d 175, 293 N.W.2d 478 (1980).

A party to a crime is guilty of that crime whether or not that party intended that crime or had the intent of its perpetrator. *State v. Stanton*, 106 Wis. 2d 172, 316 N.W.2d 134 (Ct. App. 1982).

The elements of complicity are undertaking conduct that will aid another in the execution of the crime and a conscious desire that the conduct will yield that aid. *State v. Hecht*, 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

Testimony concerning a party to the crime defendant's whereabouts during planning sessions for the crime was not an alibi and did not require a notice of alibi under s. 971.23 (8). *State v. Horenberger*, 119 Wis. 2d 237, 349 N.W.2d 692 (1984).

Depending on the facts of the case, armed robbery can be a natural and probable consequence of a robbery. In that case, an aider and abettor need not have had actual knowledge that the principals would be armed. *State v. Ivey*, 119 Wis. 2d 591, 350 N.W.2d 622 (1984).

Sub. (1) (c) may be violated where the defendant solicits a 2nd person to procure a 3rd person to commit a crime. *State v. Yee*, 160 Wis. 2d 15, 465 N.W.2d 260 (Ct. App. 1990).

Individual officers are personally responsible for criminal acts committed in the name of a corporation. *State v. Kuhn*, 178 Wis. 2d 428, 504 N.W.2d 405 (Ct. App. 1993).

A defendant may be guilty of felony murder, party to a crime, where the defendant participates with an accomplice in a felony listed in s. 940.03 and the accomplice kills another. There is no requirement that the defendant have an intent to kill, or directly cause the death. *State v. Rivera*, 184 Wis. 2d 485, 516 N.W.2d 391 (1994), *State v. Chambers*, 183 Wis. 2d 316, 515 N.W.2d 531 (Ct. App. 1994), *State v. Oimen*, 184 Wis. 2d 423, 516 N.W.2d 399 (Ct. App. 1994).

The unanimity requirement was satisfied when the jury unanimously found that the accused participated in the crime. *Lampkins v. Gagnon*, 710 F.2d 374 (1983).

This section does not shift the burden of proof. The prosecution need not specify which paragraph of sub. (2) it intends to proceed under. *Madden v. Israel*, 478 F. Supp. 1234 (1979).

Liability for coconspirator's crimes in the Wisconsin party to a crime statute. 66 MLR 344 (1983).

Application of Gipson's unanimous verdict rationale to the Wisconsin party to a crime statute. 1980 WLR 597.

Wisconsin's party to a crime statute: The mens rea element under the aiding and abetting subsection, and the aiding and abetting-choate conspiracy distinction. 1984 WLR 769.

**939.10 Common-law crimes abolished; common-law rules preserved.** Common-law crimes are abolished. The common-law rules of criminal law not in conflict with chs. 939 to 951 are preserved.

**History:** 1979 c. 89; 1987 a. 332 s. 64.

The common law privilege to forcibly resist an unlawful arrest is abrogated. *State v. Hobson*, 218 Wis. 2d 350, 577 N.W.2d 825 (1998).

**939.12 Crime defined.** A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

**939.14 Criminal conduct or contributory negligence of victim no defense.** It is no defense to a prosecution for a crime that the victim also was guilty of a crime or was contributorily negligent.

A jury instruction that a defrauded party had no duty to investigate fraudulent representations was correct. *Lambert v. State*, 73 Wis. 2d 590, 243 N.W.2d 524.

This section does not prevent considering the victim's negligence in relation to causation. This section only means that a defendant is not immune from prosecution merely because the victim has been negligent. *State v. Lohmeier*, 205 Wis. 2d 182, 556 N.W.2d 90 (1996).

**939.20 Provisions which apply only to chapters 939 to 951.** Sections 939.22 to 939.25 apply only to crimes defined in chs. 939 to 951. Other sections in ch. 939 apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 951.

**History:** 1979 c. 89; 1987 a. 332 s. 64; 1987 a. 399, 403.

**939.22 Words and phrases defined.** In chs. 939 to 948 and 951, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction or the word or phrase is defined in s. 948.01 for purposes of ch. 948:

(2) "Airgun" means a weapon which expels a missile by the expansion of compressed air or other gas.

(3) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

(4) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(6) "Crime" has the meaning designated in s. 939.12.

(8) "Criminal intent" has the meaning designated in s. 939.23.

(9) "Criminal gang" means an ongoing organization, association or group of 3 or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the criminal acts, or acts that would be criminal if the actor were an adult, specified in s. 939.22 (21) (a) to (s); that has a common name or a common identifying sign or symbol; and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(9g) "Criminal gang member" means any person who participates in criminal gang activity, as defined in s. 941.38 (1) (b), with a criminal gang.

(10) "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in s. 941.295 (4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

(11) "Drug" has the meaning specified in s. 450.01 (10).

(12) "Felony" has the meaning designated in s. 939.60.

(14) "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or

impairment of the function of any bodily member or organ or other serious bodily injury.

(16) "Human being" when used in the homicide sections means one who has been born alive.

(18) "Intentionally" has the meaning designated in s. 939.23.

(19) "Intimate parts" means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being.

(20) "Misdemeanor" has the meaning designated in s. 939.60.

(21) "Pattern of criminal gang activity" means the commission of, attempt to commit or solicitation to commit 2 or more of the following crimes, or acts that would be crimes if the actor were an adult, at least one of those acts or crimes occurs after December 25, 1993, the last of those acts or crimes occurred within 3 years after a prior act or crime, and the acts or crimes are committed, attempted or solicited on separate occasions or by 2 or more persons:

(a) Manufacture, distribution or delivery of a controlled substance or controlled substance analog, as prohibited in s. 961.41 (1).

(b) First-degree intentional homicide, as prohibited in s. 940.01.

(c) Second-degree intentional homicide, as prohibited in s. 940.05.

(d) Battery, substantial battery or aggravated battery, as prohibited in s. 940.19 or 940.195.

(e) Battery, special circumstances, as prohibited in s. 940.20.

(em) Battery or threat to witness, as prohibited in s. 940.201.

(f) Mayhem, as prohibited in s. 940.21.

(g) Sexual assault, as prohibited in s. 940.225.

(h) False imprisonment, as prohibited in s. 940.30.

(i) Taking hostages, as prohibited in s. 940.305.

(j) Kidnapping, as prohibited in s. 940.31.

(k) Intimidation of witnesses, as prohibited in s. 940.42 or 940.43.

(L) Intimidation of victims, as prohibited in s. 940.44 or 940.45.

(m) Criminal damage to property, as prohibited in s. 943.01.

(mg) Criminal damage to or threat to criminally damage the property of a witness, as prohibited in s. 943.011 or 943.017 (2m).

(n) Arson of buildings or damage by explosives, as prohibited in s. 943.02.

(o) Burglary, as prohibited in s. 943.10.

(p) Theft, as prohibited in s. 943.20.

(q) Taking, driving or operating a vehicle, or removing a part or component of a vehicle, without the owner's consent, as prohibited in s. 943.23.

(r) Robbery, as prohibited in s. 943.32.

(s) Sexual assault of a child, as prohibited in s. 948.02.

(t) Repeated acts of sexual assault of the same child, as prohibited in s. 948.025.

(22) "Peace officer" means any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

(24) "Place of prostitution" means any place where a person habitually engages, in public or in private, in nonmarital acts of sexual intercourse, sexual gratification involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact for anything of value.

(28) "Property of another" means property in which a person other than the actor has a legal interest which the actor has no right to defeat or impair, even though the actor may also have a legal interest in the property.

(30) "Public officer"; "public employe". A "public officer" is any person appointed or elected according to law to discharge a public duty for the state or one of its subordinate governmental units. A "public employe" is any person, not an officer, who per-

forms any official function on behalf of the state or one of its subordinate governmental units and who is paid from the public treasury of the state or subordinate governmental unit.

(32) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous.

(34) "Sexual contact" means the intentional touching of the clothed or unclothed intimate parts of another person with any part of the body clothed or unclothed or with any object or device, the intentional touching of any part of the body clothed or unclothed of another person with the intimate parts of the body clothed or unclothed, or the intentional penile ejaculation of ejaculate or intentional emission of urine or feces upon any part of the body clothed or unclothed of another person, if that intentional touching, ejaculation or emission is for the purpose of sexual humiliation, sexual degradation, sexual arousal or gratification.

(36) "Sexual intercourse" requires only vulvar penetration and does not require emission.

(38) "Substantial bodily harm" means bodily injury that causes a laceration that requires stitches; any fracture of a bone; a burn; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

(40) "Transfer" means any transaction involving a change in possession of any property, or a change of right, title, or interest to or in any property.

(42) "Under the influence of an intoxicant" means that the actor's ability to operate a vehicle or handle a firearm or airgun is materially impaired because of his or her consumption of an alcohol beverage, of a controlled substance or controlled substance analog under ch. 961, of any combination of an alcohol beverage, controlled substance and controlled substance analog, or of any other drug or of an alcohol beverage and any other drug.

(44) "Vehicle" means any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air.

(46) "With intent" has the meaning designated in s. 939.23.

(48) "Without consent" means no consent in fact or that consent is given for one of the following reasons:

(a) Because the actor put the victim in fear by the use or threat of imminent use of physical violence on the victim, or on a person in the victim's presence, or on a member of the victim's immediate family; or

(b) Because the actor purports to be acting under legal authority; or

(c) Because the victim does not understand the nature of the thing to which the victim consents, either by reason of ignorance or mistake of fact or of law other than criminal law or by reason of youth or defective mental condition, whether permanent or temporary.

**History:** 1971 c. 219; 1973 c. 336; 1977 c. 173; 1979 c. 89, 221; 1981 c. 79 s. 17; 1981 c. 89, 348; 1983 a. 17, 459; 1985 a. 146 s. 8; 1987 a. 332, 399; 1993 a. 98, 213, 227, 441, 486; 1995 a. 69, 436, 448; 1997 a. 143, 295.

It was for the jury to determine whether a soft drink bottle, with which the victim was hit on the head, constituted a dangerous weapon. Actual injury to the victim is not required. *Langston v. State*, 61 Wis. 2d 288, 212 N.W.2d 113.

An unloaded pellet gun qualifies as a "dangerous weapon" under sub. (10) in that it was designed as a weapon and, when used as a bludgeon, is capable of producing great bodily harm. *State v. Antes*, 74 Wis. 2d 317, 246 N.W.2d 671.

A jury could reasonably find that numerous cuts and stab wounds constituted "serious bodily injury" under sub. (14) even though there was no probability of death, no permanent injury, and no damage to any member or organ. *La Barge v. State*, 74 Wis. 2d 327, 246 N.W.2d 794.

A jury must find that acts of prostitution were repeated or were continued in order to find that premises are "a place of prostitution" under sub. (24). *Johnson v. State*, 76 Wis. 2d 672, 251 N.W.2d 834.

Sub. (14), either on its face or as construed in *La Barge*, is not constitutionally vague. *Cheatham v. State*, 85 Wis. 2d 112, 270 N.W.2d 194 (1978).

Definitions of "under the influence" in this section and in s. 346.63 (1) (a) are equivalent. *State v. Waalen*, 130 Wis. 2d 18, 386 N.W.2d 47 (1986).

To determine whether an infant was "born alive" under sub. (16), the s. 146.71 standard to determine death is applied, as, "if one is not dead he is indeed alive". *State v. Cornelius*, 152 Wis. 2d 272, 448 N.W.2d 434 (Ct. App. 1989).

A dog may be a dangerous weapon under sub. (10). *State v. Sinks*, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct. App. 1992).

(g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

(i) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

**(2) SEXUAL CONTACT PROHIBITED.** Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class C felony. Consent is not an issue in an action under this subsection.

**(3) REPORTS OF SEXUAL CONTACT.** (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub. (2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par. (a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1. is not applicable.

(c) A report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub. (2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par. (a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars. (a) to (c) is guilty of a Class A misdemeanor.

**(4) CONFIDENTIALITY OF REPORTS AND RECORDS.** (a) All reports and records made from reports under sub. (3) and maintained by the department, examining boards, affiliated credentialing boards, district attorneys and other persons, officials and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub. (3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney, an examining board or an affiliated credentialing board within this state may exchange information from a report or record on the same subject.

2. If the department receives 2 or more reports under sub. (3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub. (3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2. or 3., they may inform the applicable patients or clients that another report was received regarding the same subject.

(c) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

**(5) IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to be acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

**History:** 1983 a. 434; 1985 a. 275; 1987 a. 352, 380; 1991 a. 160; 1993 a. 107; 1995 a. 300.

This section applies to persons engaged in a professional therapist-patient relationship. A teacher who conducts informal counseling is not engaged as a professional therapist. *State v. Ambrose*, 196 Wis. 2d 768, 540 N.W.2d 208 (Ct. App. 1995).

**940.225 Sexual assault. (1) FIRST DEGREE SEXUAL ASSAULT.** Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

**(2) SECOND DEGREE SEXUAL ASSAULT.** Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) **THIRD DEGREE SEXUAL ASSAULT.** Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony. Whoever has sexual contact in the manner described in sub. (5) (b) 2. with a person without the consent of that person is guilty of a Class D felony.

(3m) **FOURTH DEGREE SEXUAL ASSAULT.** Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) **CONSENT.** “Consent”, as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub. (2) (c), (cm), (d) and (g). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) **DEFINITIONS.** In this section:

(ag) “Inpatient facility” has the meaning designated in s. 51.01 (10).

(ai) “Intoxicant” means any controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. “Intoxicant” does not include any alcohol beverage.

(am) “Patient” means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) “Resident” means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) “Sexual contact” means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant’s or defendant’s intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) “Sexual intercourse” includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required.

(d) “State treatment facility” has the meaning designated in s. 51.01 (15).

(6) **MARRIAGE NOT A BAR TO PROSECUTION.** A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) **DEATH OF VICTIM.** This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

**History:** 1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134; 1987 a. 245, 332, 352; 1987 a. 403 ss. 235, 236, 256; 1993 a. 445; 1995 a. 69; 1997 a. 220.

**Legislative Council Note, 1981:** Presently, [in sub. (5) (a)] the definition of “sexual intercourse” in the sexual assault statute includes any intrusion of any part of a person’s body or of any object into the genital or anal opening of another person. This proposal clarifies that the intrusion of the body part or object may be caused by the direct act of the offender (defendant) or may occur as a result of an act by the victim which is done in compliance with instructions of the offender (defendant). [Bill 630-S]

Failure to resist is not consent under sub. (4). *State v. Clark*, 87 Wis. 2d 804, 275 N.W.2d 715 (1979).

Injury by conduct regardless of life is not a lesser-included crime of first-degree sexual assault. *Hagenkord v. State*, 94 Wis. 2d 250, 287 N.W.2d 834 (Ct. App. 1979).

Multiplicitous sexual assault charges are discussed. *State v. Eisch*, 96 Wis. 2d 25, 291 N.W.2d 800 (1980).

The trial court did not err in denying the accused’s motions to compel psychiatric examination of the victim and for discovery of the victim’s past addresses. *State v. Lederer*, 99 Wis. 2d 430, 299 N.W.2d 457 (Ct. App. 1980).

the verdict was unanimous in a rape case even though the jury was not required to specify whether the sexual assault was vaginal or oral. *State v. Lomagro*, 113 Wis. 2d 582, 335 N.W.2d 583 (1983).

A jury instruction that touching the “vaginal area” constituted sexual contact was correct. *State v. Morse*, 126 Wis. 2d 1, 374 N.W.2d 388 (Ct. App. 1985).

“Unconscious” as used in sub. (2) (d) is a loss of awareness that may be caused by sleep. *State v. Curtis*, 144 Wis. 2d 691, 424 N.W.2d 719 (Ct. App. 1988).

The probability of exclusion and paternity are generally admissible in a sexual assault action in which the assault allegedly resulted in the birth of a child, but the probability of paternity is not generally admissible. HLA and red blood cell test results showing the paternity index and probability of exclusion were admissible statistics. *State v. Hartman*, 145 Wis. 2d 1, 426 N.W.2d 320 (1988).

A defendant’s lack of intent to make a victim believe that he was armed was irrelevant in finding a violation of sub. (1) (b); if the victim’s belief that the defendant was armed was reasonable, that is enough. *State v. Hubanks*, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Attempted fourth-degree sexual assault is not an offense under Wisconsin law. *State v. Cvorovic*, 158 Wis. 2d 630, 462 N.W.2d 897 (Ct. App. 1990).

The “use or threat of force or violence” under sub. (2) (a) is discussed. *State v. Bonds*, 165 Wis. 2d 27, 477 N.W.2d 265 (1991).

A dog may be a dangerous weapon under sub. (1) (b). *State v. Sinks*, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct. App. 1992).

Convictions under both subs. (1) (d) and (2) (d) did not violate double jeopardy. *State v. Saucedo*, 168 Wis. 2d 486, 485 N.W.2d 1 (1992).

Sub. (2) (d) is not unconstitutionally vague. Expert evidence regarding sleep based solely on a hypothetical situation similar but not identical to the facts of the case was inadmissible. *State v. Pittman*, 174 Wis. 2d 255, 496 N.W.2d 74 (1993).

Convictions under both subs. (2) (a) and (2) (e) did not violate double jeopardy. *State v. Selmon*, 175 Wis. 2d 155, 877 N.W.2d 498 (Ct. App. 1993).

“Great bodily harm” is a distinct element under sub. (1) (a) and need not be caused by the sexual act. *State v. Schambow*, 176 Wis. 2d 286, N.W.2d (Ct. App. 1993).

Intent is not an element of sub. (2) (a); lack of an intent element does not render this provision constitutionally invalid. *State v. Neumann*, 179 Wis. 2d 687, 508 N.W.2d 54 (Ct. App. 1993).

A previous use of force, and the victim’s resulting fear, was an appropriate basis for finding that a threat of force existed under sub. (2) (a). *State v. Speese*, 191 Wis. 2d 205, 528 N.W.2d 63 (Ct. App. 1995).

Violation of any of the provisions of this section does not immunize the defendant from violating the same or another provision in the course of sexual misconduct. Two acts of vaginal intercourse are sufficiently different in fact to justify separate charges under sub. (1) (d). *State v. Kruzycki*, 192 Wis. 2d 509, 531 N.W.2d 429 (Ct. App. 1995).

A defendant need not be informed of the potential of a ch. 980 commitment for a guilty plea to a sexual assault charge to be knowingly made as the commitment is a collateral, and not direct, consequence of the plea. *State v. Myers*, 199 Wis. 2d 391, 544 N.W.2d 609 (Ct. App. 1996).

Sub. (2) (c) is not unconstitutionally vague. *State v. Smith*, 215 Wis. 2d 84, 572 N.W.2d 496 (Ct. App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. *State v. Bollig*, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199.

Conviction on 2 counts of rape, for acts occurring 25 minutes apart in the same location, did not violate double jeopardy. *Harrell v. Israel*, 478 F. Supp. 752 (1979).

A conviction for attempted 1st degree sexual assault based on circumstantial evidence did not deny due process. *Upshaw v. Powell*, 478 F. Supp. 1264 (1979).

**940.23 Reckless injury.** (1) **FIRST-DEGREE RECKLESS INJURY.** (a) Whoever recklessly causes great bodily harm to

(9) In determining whether material is obscene under sub. (2) (c) 1. and 3., a judge or jury shall examine individual pictures or passages in the context of the work in which they appear.

(10) The provisions of this section, including the provisions of sub. (8), are severable, as provided in s. 990.001 (11).

**History:** 1977 c. 173, 272; 1987 a. 416; 1993 a. 399; 1995 a. 27 s. 9154 (1); 1997 a. 27; 1999 a. 9.

The sufficiency of an obscenity complaint and the correctness of jury instructions are discussed. *State v. Simpson*, 56 Wis. 2d 27, 201 N.W.2d 558.

To charge a defendant with the possession or sale of obscene materials the complaint must allege that the defendant knew the nature of the materials; a charge that he acted "feloniously" is insufficient to charge scienter. *State v. Schneider*, 60 Wis. 2d 563, 211 N.W.2d 630.

**NOTE:** The preceding annotations relate to this section as it existed prior to its treatment by 1987 Wis. Act. 416.

This section is not unconstitutionally overbroad or vague. States are not prevented from deviating from the *Miller v. Calif.* 413 U.S. 15, language in regulating obscenity. Jury instructions that use synonymous or explanatory terms not used in *Miller* are not improper. *County of Kenosha v. C. & S. Management, Inc.* 223 Wis. 2d 373, 588 N.W.2d 236 (1999).

A telephone survey regarding community standards is irrelevant. A relevant survey must address whether the material at issue depicts acts in a patently offensive manner and appeals to the prurient interest. *County of Kenosha v. C. & S. Management, Inc.* 223 Wis. 2d 373, 588 N.W.2d 236 (1999).

Contemporary community standards must be applied by juries in accordance with their own understanding of the average tolerance of the average person in their community. The community to be considered is the state. Material is obscene if it appeals to prurient interest, not if it intends or attempts to appeal to prurient interest. *State v. Tee & Bee, Inc.* 229 Wis. 2d 446, 600 N.W.2d 230 (Ct. App. 1999).

The federal constitution does not mandate that juries be instructed to apply standards of a hypothetical statewide community. *Jenkins v. Georgia*, 418 U.S. 153.

A motion picture cannot be seized without a prior adversary hearing. *Detco, Inc. v. Neelen*, 356 F. Supp. 289.

Behind the Curtain of Privacy: How Obscenity Law Inhibits the Expression of Ideas About Sex and Gender. Peterson. 1998 WLR 625.

From Ulysses to Pornjoy: A pornography primer. Eich, 53 MLR 155.

**944.23 Making lewd, obscene or indecent drawings.** Whoever makes any lewd, obscene or indecent drawing or writing in public or in a public place is guilty of a Class C misdemeanor.

**History:** 1977 c. 173.

## PROSTITUTION.

**944.30 Prostitution.** Any person who intentionally does any of the following is guilty of a Class A misdemeanor:

(1) Has or offers to have or requests to have nonmarital sexual intercourse for anything of value.

(2) Commits or offers to commit or requests to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another for anything of value.

(3) Is an inmate of a place of prostitution.

(4) Masturbates a person or offers to masturbate a person or requests to be masturbated by a person for anything of value.

(5) Commits or offers to commit or requests to commit an act of sexual contact for anything of value.

**History:** 1977 c. 173; 1979 c. 221; 1983 a. 17; 1993 a. 213.

In order for a female prostitute to avoid prosecution upon equal protection grounds, it must be shown that the failure to prosecute male patrons was selective, persistent, discriminatory and without justifiable prosecutorial discretion. *State v. Johnson*, 74 Wis. 2d 169, 246 N.W.2d 503.

Prosecuting for solicitation under s. 939.30 rather than for prostitution under s. 944.30 did not deny equal protection. *Sears v. State*, 94 Wis. 2d 128, 287 N.W.2d 785 (1980).

A prostitution raid focusing only on female participants amounts to selective prosecution in violation of equal protection. The applicable constitutional analysis is discussed. *State v. McCollum*, 159 Wis. 2d 184, 464 N.W.2d 44 (Ct. App. 1990).

As long as someone compensates another for engaging in nonmarital sex, the elements of prostitution are met. The person making payment need not engage in the sexual act. *State v. Kittilstad*, 231 Wis. 2d 245, 603 N.W.2d 732 (1999).

**944.31 Patronizing prostitutes.** Any person who enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute is guilty of a Class A misdemeanor.

**History:** 1977 c. 173; 1979 c. 221; 1983 a. 17.

**944.32 Soliciting prostitutes.** Except as provided under s. 948.08, whoever intentionally solicits or causes any person to practice prostitution or establishes any person in a place of prostitution is guilty of a Class D felony.

**History:** 1977 c. 173; 1987 a. 332.

Section 944.32, 1985 stats., prohibiting solicitation of prostitutes, does not violate right of free speech. *Shillcutt v. State*, 74 Wis. 2d 642, 247 N.W.2d 694.

This section is not unconstitutionally vague or overbroad and its penalty is not disproportionate. *State v. Johnson*, 108 Wis. 2d 703, 324 N.W.2d 447 (Ct. App. 1982).

Monetary gain is not an element of the crime. *State v. Huff*, 123 Wis. 2d 397, 367 N.W.2d 226 (Ct. App. 1985).

**944.33 Pandering. (1)** Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Solicits another to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a person the solicitor knows is a prostitute; or

(b) With intent to facilitate another in having nonmarital intercourse or committing an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute, directs or transports the person to a prostitute or directs or transports a prostitute to the person.

(2) If the person received compensation from the earnings of the prostitute, such person is guilty of a Class C felony.

(3) In a prosecution under this section, it is competent for the state to prove other similar acts by the accused for the purpose of showing the accused's intent and disposition.

**History:** 1977 c. 173; 1979 c. 221, 355; 1983 a. 17; 1993 a. 486.

**944.34 Keeping place of prostitution.** Whoever intentionally does any of the following is guilty of a Class D felony:

(1) Keeps a place of prostitution; or

(2) Grants the use or allows the continued use of a place as a place of prostitution.

**History:** 1977 c. 173.

A conviction under sub. (2) requires proof that the defendant has authority to exclude those engaging in prostitution from the use of the place for prohibited acts. *Shillcutt v. State*, 74 Wis. 2d 642, 247 N.W.2d 694.

Under sub. (2), "grants the use" requires the prosecution to prove a single affirmative approval of the use of the premises as a place of prostitution, while "allows the continued use of" requires proof of intentional but passive acquiescence or toleration of the use on more than one occasion. *Johnson v. State*, 76 Wis. 2d 672, 251 N.W.2d 834.

**944.36 Solicitation of drinks prohibited.** Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued under ch. 125 who permits an entertainer or employe to solicit a drink of any alcohol beverage, as defined in s. 125.02 (1), or any other drink from a customer on the premises, or any entertainer or employe who solicits such drinks from any customer, is guilty of a Class B misdemeanor.

**History:** 1975 c. 39 s. 675x; 1975 c. 199; Stats. 1975 s. 944.36; 1977 c. 173; 1981 c. 79.

**Legislative Council Note, 1981:** The amendment to s. 944.36 reflects the combining of s. 66.054 and ch. 176 into one chapter, ch. 125, and the definition of "alcohol beverage" in that chapter. [Bill 300-A]

(6) Sections 961.01 (6) and (9) and 961.49, relating to delivering and distributing controlled substances or controlled substance analogs to children.

(7) Section 444.09 (4), relating to boxing.

History: 1987 a. 332; 1989 a. 31; 1993 a. 27; 1995 a. 448.

**948.02 Sexual assault of a child. (1) FIRST DEGREE SEXUAL ASSAULT.** Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class BC felony.

(3) FAILURE TO ACT. A person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class C felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

(3m) PENALTY ENHANCEMENT; SEXUAL ASSAULT BY CERTAIN PERSONS. If a person violates sub. (1) or (2) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(4) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(5) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1987 a. 332; 1989 a. 31; 1995 a. 14, 69.

Relevant evidence in child sexual assault cases is discussed. In Interest of Michael R.B. 175 Wis. 2d 713, 499 N.W.2d 641 (1993).

Limits relating to expert testimony regarding child sex abuse victims is discussed. State v. Hernandez, 192 Wis. 2d 251, 531 N.W.2d 348 (Ct. App. 1995).

The criminalization under sub. (2) of consensual sexual relations with a child under 16 does not violate the defendant's constitutionally protected privacy rights. State v. Fisher, 211 Wis. 2d 664, 565 N.W.2d 565 (Ct. App. 1997).

Second degree sexual assault under sub. (2) is a lesser included offense of first degree sexual assault under sub. (1). State v. Moua, 215 Wis. 2d 510, 573 N.W.2d 210 (Ct. App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199.

Constitutionality upheld. Sweeney v. Smith, 9 F. Supp.2d 1026 (1998).

**948.025 Engaging in repeated acts of sexual assault of the same child. (1)** Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of a Class B felony.

(2) If an action under sub. (1) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations occurred within the time period applicable under sub. (1) but need not agree on which acts constitute the requisite number.

(2m) If a person violates sub. (1) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(3) The state may not charge in the same action a defendant with a violation of this section and with a felony violation involving the same child under ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.08, 948.10, 948.11 or 948.12, unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.

History: 1993 a. 227; 1995 a. 14.

Sub. (2) is constitutional. The right to a unanimous jury verdict is fulfilled by the requirement the a continuous course of conduct be found. State v. Molitor, 210 Wis. 2d 416, 565 N.W.2d 248 (Ct. App. 1997).

**948.03 Physical abuse of a child. (1) DEFINITIONS.** In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class C felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class D felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class C felony.

(3) RECKLESS CAUSATION OF BODILY HARM. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class D felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class E felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class D felony.

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class D felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

(5) PENALTY ENHANCEMENT; ABUSE BY CERTAIN PERSONS. If a person violates sub. (2) or (3) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(6) TREATMENT THROUGH PRAYER. A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s. 48.981 (3) (c) 4. or 448.03 (6) in lieu of medical or surgical treatment.

History: 1987 a. 332.

To obtain a conviction for aiding and abetting a violation of sub. (2) or (3) the state must prove conduct which as a matter of objective fact aids another in executing the crime. State v. Rundle, 176 Wis. 2d 985, 500 N.W.2d 916 (Ct. App. 1993).

A live-in boyfriend can be a person responsible for the welfare of a child under sub. (5) if he was used by the child's legal guardian as a caretaker for the child. State v. Sostre, 198 Wis. 2d 409, 542 N.W.2d 774 (1996).

**948.04 Causing mental harm to a child. (1)** Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class C felony.

(2) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act

exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

History: 1987 a. 332.

**948.05 Sexual exploitation of a child.** (1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class C felony:

(a) Employs, uses, persuades, induces, entices or coerces any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct.

(b) Photographs, films, videotapes, records the sounds of or displays in any way a child engaged in sexually explicit conduct.

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes or possesses with intent to sell or distribute, any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct is guilty of a Class C felony if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) is guilty of a Class C felony.

(3) It is an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or (2) if the defendant had reasonable cause to believe that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

History: 1987 a. 332; 1999 a. 3.

"Import" under sub. (1) (c) means bringing in from an external source and does not require a commercial element or exempt personal use. State v. Bruckner, 151 Wis. 2d 833, 447 N.W.2d 376 (Ct. App. 1989).

The purposes of ss. 948.05, child exploitation, and 948.07, child enticement, are distinct and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999).

**948.055 Causing a child to view or listen to sexual activity.** (1) Whoever intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct may be penalized as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

(2) Whoever violates sub. (1) is guilty of:

(a) A Class C felony if the child has not attained the age of 13 years.

(b) A Class D felony if the child has attained the age of 13 years but has not attained the age of 18 years.

History: 1987 a. 334; 1989 a. 359; 1993 a. 218 ss. 6, 7; Stats. 1993 s. 948.055; 1995 a. 67.

**948.06 Incest with a child.** Whoever does any of the following is guilty of a Class BC felony:

(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin; or

(2) Is a person responsible for the child's welfare and:

(a) Has knowledge that another person related to the child by blood or adoption in a degree of kinship closer than 2nd cousin has had or intends to have sexual intercourse or sexual contact with the child;

(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated;

(c) Fails to take that action; and

(d) The failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

History: 1987 a. 332; 1995 a. 69.

**948.07 Child enticement.** Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:

(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02 or 948.095.

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

(4) Taking a picture or making an audio recording of the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

History: 1987 a. 332; 1995 a. 67, 69, 448, 456.

The penalty scheme of sub. (3) is not unconstitutionally irrational. That the statute, unlike sub. (1), did not distinguish between victim 16 years or older and other children victims is a matter for the legislature. State v. Hanson, 182 Wis. 2d 481, 513 N.W.2d 700 (Ct. App. 1994).

Multiple punishments for a single act of enticement prohibited under more than one subsection of this section violated the protection against double jeopardy. Although the defendant intended to commit multiple illegal acts, multiple criminal punishments were not appropriate. Multiple punishments are appropriate for multiple acts, not multiple thoughts. State v. Church, 223 Wis. 2d 641, 589 N.W.2d 638 (Ct. App. 1998).

The purposes of ss. 948.05, child exploitation, and 948.07, child enticement, are distinct and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999).

The gravamen of the offense under this section is not the commission of an enumerated act, but succeeding in getting a child to enter a place with intent to commit the act. The punishment is the same whether one or all the acts is committed. A defendant is not entitled to a unanimity instruction. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999).

This section includes the attempted crime, as well as the completed crime, and cannot be combined with the general attempt statute. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999).

**948.08 Soliciting a child for prostitution.** Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class BC felony.

History: 1987 a. 332; 1995 a. 69.

**948.09 Sexual intercourse with a child age 16 or older.** Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

History: 1987 a. 332.

**948.095 Sexual assault of a student by a school instructional staff person.** (1) In this section:

(a) "School" means a public or private elementary or secondary school.

(b) "School staff" means any person who provides services to a school or a school board, including an employe of a school or a school board and a person who provides services to a school or a school board under a contract.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class D felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

History: 1995 a. 456.

**948.10 Exposing genitals or pubic area.** (1) Whoever, for purposes of sexual arousal or sexual gratification, causes a

child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply under any of the following circumstances:

- (a) The child is the defendant's spouse.
- (b) A mother's breast-feeding of her child.

History: 1987 a. 332; 1989 a. 31; 1995 a. 165.

**948.11 Exposing a child to harmful material or harmful descriptions or narrations. (1) DEFINITIONS.** In this section:

(ag) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

(ar) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or sound recording that contains any matter enumerated in subd. 1., or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and
3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.

(bm) "Knowledge of the nature of the description or narrative account" means knowledge of the character and content of a harmful description or narrative account.

(c) "Knowledge of the nature of the material" means knowledge of the character and content of any material described herein.

(d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) CRIMINAL PENALTIES. (a) Whoever, with knowledge of the nature of the material, sells, rents, exhibits, transfers or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class E felony.

(am) Any person who has attained the age of 17 and who, with knowledge of the nature of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class E felony.

(b) Whoever, with knowledge of the nature of the material, possesses harmful material with the intent to sell, rent, exhibit, transfer or loan the material to a child is guilty of a Class A misdemeanor.

(c) It is an affirmative defense to a prosecution for a violation of this section if the defendant had reasonable cause to believe that

the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

(3) EXTRADITION. If any person is convicted under sub. (2) and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.

(4) LIBRARIES AND EDUCATIONAL INSTITUTIONS. (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employe, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employe, a member of the board of directors or a trustee:

1. A public elementary or secondary school.
2. A private school, as defined in s. 115.001 (3r).
3. Any school offering vocational, technical or adult education that:
  - a. Is a technical college, is a school approved by the educational approval board under s. 45.54 or is a school described in s. 45.54 (1) (e) 6., 7. or 8.; and
  - b. Is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).
4. Any institution of higher education that is accredited, as described in s. 39.30 (1) (d), and is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).
5. A library that receives funding from any unit of government.

(5) SEVERABILITY. The provisions of this section, including the provisions of sub. (4), are severable, as provided in s. 990.001 (11).

History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9.

This section is not unconstitutionally overbroad. The exemption from prosecution of libraries, educational institutions and their employes and directors does not violate equal protection rights. *State v. Thiel*, 183 Wis. 2d 505, 515 N.W.2d 847 (1994).

The lack of a requirement in sub. (2) (a) that the defendant know the age of the child exposed to the harmful material does not render the statute unconstitutional on its face. *State v. Kevin L.C.* 216 Wis. 2d 166, 576 N.W.2d 62 (Ct. App. 1997).

**948.12 Possession of child pornography.** Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape or other pictorial reproduction or audio recording of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of a Class E felony:

- (1) The person knows that he or she possesses the material.
- (2) The person knows the character and content of the sexually explicit conduct shown in the material.
- (3) The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.

History: 1987 a. 332; 1995 a. 67.

A violation of this section must be based on the content of the photograph and how it was produced. Evidence of the location and manner of storing the photo are not properly considered. *State v. A. H.* 211 Wis. 2d 561, 566 N.W.2d 858 (Ct. App. 1997).

